

**OFFICIAL INFORMATION\*\*CONFIDENTIAL\*\*EVIDENCE CODE SECTION 1040  
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: July 9, 2020

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: OFFICER-INVOLVED SHOOTING 041-19 FOR 7/21/20 CLOSED-  
SESSION AGENDA

<b>Division</b>	<b>Date</b>	<b>Time</b>	<b>Duty-On (X) Off ()</b>	<b>Uniform-Yes (X) No ()</b>
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Hollenbeck	8/18/19	11:19 p.m.		
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<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Malone, M./PO II	2 years, 11 months
Mott, A./PO II	3 years, 3 months
Hernandez, O./PO I	1 year

**Total Involved Officer(s)**

3 x PO II  
1 x PO I

<b>Suspect</b>	<b>Deceased (X)</b>	<b>Wounded ()</b>	<b>Non-Hit ()</b>
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Roberto Rene Gabriel, Male Hispanic, 33 years of age.

**COP Recommendations**

**Tactics** – Tactical Debrief, Officers Mott, Malone, Mencias, and Hernandez.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers Mott, Malone, Mencias, and Hernandez.

**Lethal Use of Force** – In Policy, No Further Action, Officers Mott, Malone, and Hernandez.

**IG Recommendations**

**Tactics** – Same as COP.

**Drawing/Exhibiting** – Same as COP.

**Lethal Use of Force** – Same as COP.

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## **INVESTIGATION**

### **Annotated Force Investigation Division (FID) Incident Summary<sup>1</sup>**

#### **Synopsis**

On Sunday, August 18, 2019, at approximately 2318 hours, uniformed Hollenbeck Special Problems Unit (SPU) officers observed a male pedestrian walking south on Lombardy Boulevard approaching Alhambra Avenue. The officers stopped their police vehicle at the intersection when the male entered the crosswalk and began to walk west toward their direction. Suddenly, the male retrieved a handgun from his sweatshirt, pointed the handgun in the officers' direction and fired a round at the officers, who were seated in their vehicle.

The male fled on foot and entered an alley as the officers began to search for him. The male was located a short time later walking west on Alhambra Avenue approaching Belleglade Avenue at which time he again fired at the officers, resulting in an Officer-Involved Shooting (OIS). The suspect once again fled on foot, at which time he encountered additional responding officers from Hollenbeck Patrol Division. The suspect turned and pointed a handgun in the direction of the responding officers, resulting in a second OIS. The suspect was struck by gunfire and subsequently died from his injuries.

#### **Investigative Summary**

On August 18, 2019, uniformed Police Officers II Adam Mott, Serial No. 42551, and Michael Malone, Serial No. 42698, Unit 4Q26, Hollenbeck SPU, were assigned to conduct crime suppression in Hollenbeck Area. Officer Mott was the driver of Shop No. 80601, a marked black and white police Sport Utility Vehicle (SUV) equipped with ballistic door panels and a Digital In-Car Video System (DICVS).<sup>2</sup>

Officers Mott and Malone had been assigned as partners for approximately one year and routinely discussed tactics. The officers discussed tactics regarding pedestrian stops and in the event of a foot pursuit, whether they would go into containment or apprehension mode. According to Officer Mott, they had recently discussed the tactics

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<sup>1</sup> The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

<sup>2</sup> Officer Mott, three years, three months with the Department, 28 years of age, 6 feet, 4 inches tall, 240 pounds. Officer Malone, two years, 11 months with the Department, 28 years of age, 6 feet tall, 215 pounds. Officers Mott and Malone were wearing ballistic vests and had Department-approved handguns, handcuffs, TASERS, DICVS microphones, Body Worn Video (BWV) and canisters of Oleoresin Capsicum (OC) spray attached to their Sam Browne equipment belts. The officers had their side-handle batons inside their police vehicle. Officers Mott and Malone had their Hobble Restraint Devices (HRD) on their person.

they would utilize in the event an armed individual shot at them while they were seated in their police vehicle. The officers agreed they would accelerate their police vehicle away from the threat and then address the situation.

**Note:** Officer Malone did not indicate they had discussed the tactics they would utilize in the event an armed individual shot at them while seated in their police vehicle.

**Unless otherwise noted, the times in this report were derived from Officer Mott's BWV. All additional information was gleaned from the respective officers' BWV, DICVS, video surveillance footage and from the officers' statements.**

At approximately 2317 hours, Officers Mott and Malone were driving east on Ithaca Avenue when they stopped for a stop sign at Lombardy Boulevard, in the El Sereno neighborhood of Los Angeles. The officers observed a male, later identified as Roberto Rene Gabriel, 33 years of age, walking south on the east sidewalk of Lombardy toward Alhambra Avenue.<sup>3</sup> Due to the darkness, Officer Malone activated the passenger's side spotlight and illuminated Gabriel. According to Officer Mott, he noticed Gabriel was wearing a black hooded sweatshirt with the hood nearly covering his eyes and had both hands inside his front sweatshirt pockets.

**Note:** According to Officer Mott, the Lincoln Heights and Avenues criminal street gangs had been involved in an ongoing dispute with one another which has resulted in an increase in violent crime in the El Sereno area (Investigators' Note No. 1).

Officer Mott negotiated a southbound turn onto Lombardy Boulevard as Gabriel continued walking south on the sidewalk. According to Officer Mott, Gabriel was walking at a slow pace and had his head tilted down as he approached Alhambra Avenue, at which time Officer Malone turned off the spotlight. Gabriel arrived at the northeast corner of Lombardy and Alhambra, at which point Officer Mott utilized his flashlight and illuminated Gabriel.

**Note:** The officers indicated they illuminated Gabriel because he was walking in a dark area. According to the officers, they had no intention of detaining Gabriel.

Gabriel entered the east/west crosswalk on the north side of the intersection and began to walk west on Alhambra Avenue. Officer Mott stopped the police vehicle halfway into the east/west crosswalk for the red phase tri-light. Video surveillance footage obtained from Organica Creations, located at 5201 Alhambra Avenue, captured Gabriel walking in the crosswalk towards the police vehicle.<sup>4</sup> Suddenly, Gabriel began to walk north in

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<sup>3</sup> Roberto Rene Gabriel, 5 feet, 8 inches tall, 192 pounds, member of the El Sereno criminal street gang, known by the moniker of "Gizmo."

<sup>4</sup> The Organica Creations video footage was booked under Control No. 746787.

the northbound traffic lane of Lombardy as Officer Mott continued to illuminate Gabriel. When Gabriel was parallel to the driver's door of the police vehicle, approximately nine feet away, he removed a handgun from he's right front sweatshirt pocket, obtained a two-hand shooting position and fired one round at the officers (Investigators' Note No. 2).

**Note:** Video surveillance footage from the Brooklyn Smog Center, located at 5197 Alhambra Avenue, recorded the audible sound of a single gunshot at 2318:13 hours.<sup>5</sup>

According to Officer Mott, Gabriel was looking directly at him when he fired the round. The bullet struck the top portion of the driver's door just above the ballistic panel, continued through the police vehicle and exited the front passenger door window. According to Officer Mott, he felt debris strike his arm after Gabriel fired the round (Addendum No. 1).

**Note:** The driver and front passenger door windows were in the down position when Gabriel discharged the round.

One discharged 9mm cartridge case (Item No. 26) was recovered from Lombardy near the intersection of Alhambra Avenue. Firearms Examiner Genaro Arredondo, Serial No. N4417, Forensic Science Division (FSD), Firearms Analysis Unit (FAU), determined the discharged cartridge case was fired from Gabriel's pistol (Addendum No. 2).



**Photograph depicting where the bullet struck the police vehicle door**

After Gabriel discharged his pistol, Officer Mott accelerated and drove the police vehicle south on Lombardy Boulevard to escape the deadly threat. As he did so, Gabriel began to run north on Lombardy. Video surveillance footage from the Brooklyn Smog Center

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<sup>5</sup> The Brooklyn Smog Center video footage was booked under Control No. 749303.

captured Gabriel running north with his upper body facing south towards the moving police vehicle and both arms raised in what appears to be a two-hand shooting position.

**Note:** Evidence determined that Gabriel did not discharge a second round at this time. Video footage from the Brooklyn Smog Center did not capture the audible sound of a second gunshot and only one Discharged Cartridge Casing (DCC) was located on Lombardy Boulevard. Two live 9mm cartridges (Item Nos. 36 and 37) were recovered from Lombardy in the area depicted in the below photo. As of the date of this report, Cycle Mark Comparison results on the live cartridges are pending.



**Brooklyn Smog Center screen shot which depicts Gabriel in what appears to be a two-hand shooting position**

As the police vehicle continued through the intersection, Officer Malone unholstered his service pistol while still seated in the vehicle. According to Officer Malone, *“At -- at that point in time I believed he was trying to kill us and I believed that this situation had escalated to where deadly force would be justified so I unholstered my firearm.”*<sup>6</sup> Officer Malone grabbed the police radio microphone from inside the police vehicle with his left hand while holding his pistol in his right hand. Officer Mott crossed the intersection and negotiated a U-turn on Lombardy as Gabriel ran west into the east/west alley, north of Alhambra Avenue.

At approximately 2318:18 hours, Officer Malone broadcast, “Q26, Officer Needs Help. I’m at Lombardy and Alhambra. Shots fired, shots fired. It’s going to be a male Hispanic. He’s running westbound through the alley, west of Lombardy and north of Alhambra. Male Hispanic. He’s wearing black over blue.” Communications Division (CD) acknowledged and broadcast, “All units, officer needs help Lombardy...and Alhambra, Lombardy and Alhambra. Shots fired. Suspect is running westbound

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<sup>6</sup> Malone, Page 7, Lines 11-14.

through the alley. A male Hispanic, black over blue. Any Air Unit come on Hollenbeck frequency.”

Officer Mott drove north on Lombardy Boulevard through a red-phase tri-light at Alhambra Avenue. While seated in the police vehicle, Officer Mott unholstered his service pistol and held it in his right hand with his finger along the frame while he maneuvered the police vehicle with his left hand. According to Officer Mott, *“At that point, I unholster my firearm based on the tactical situation and my reasonable belief that the situation to escalate to deadly force. He had already shot at us once. I lost sight of him. I wasn’t sure where he was going to pop out.”*<sup>7</sup> (Investigators’ Note No. 3).

In response to the help broadcast, the following Hollenbeck units responded: Police Officer II Victor Mencias, Serial No. 37050, and Police Officer I Oscar Hernandez, Serial No. 43638, Unit 4Q2; Police Officer III Edward Artiaga, Serial No. 40509, and Police Officer II Guillermo Arias, Serial No. 41487, Unit 4A15; Sergeant I Jose Covarrubias, Serial No. 35443, Unit 4Q20; Sergeant II Jose Vazquez, Serial No. 30976, Unit 4Q30; and Sergeant I Dana Grant, Serial No. 34715, Unit 4L30.

As the police vehicle approached the east/west alley, Officers Mott and Malone pointed their service pistols in a westerly direction toward the alley. According to Officer Mott, he did not see Gabriel when they arrived at the alley. The officers discussed a plan and decided to cover the west side of the block. Officer Mott accelerated north on Lombardy and then negotiated a westbound turn onto Ithaca Avenue. At approximately 2318:48 hours, Officer Malone broadcast, “I need a perimeter set-up. I need Alhambra and let’s take it to Gratiot. Alhambra and Gratiot, Ithaca and Gratiot. I need Lombardy and Ithaca, and Lombardy and Alhambra.” When asked by Force Investigation Division (FID) investigators, the officers indicated they were in containment mode.

**Note:** Officer Malone stated he saw the suspect running west in the alley.<sup>8</sup>

Hollenbeck frequency, Channel 4, did not capture Officer Malone’s entire broadcast.

Unbeknownst to the officers, when Gabriel entered the east/west alley, he ran south in the driveway of the Super Albert Mexican food restaurant, located at 5189 Alhambra Avenue. The restaurant was one business west of Lombardy Boulevard. Video surveillance footage from the Brooklyn Smog Center captured Gabriel exiting the driveway and running west on Alhambra toward Belleglade Avenue.

As Officers Mott and Malone continued to travel west on Ithaca Avenue they were still unholstered. According to Officer Malone, they drove to Belleglade Avenue to secure the west side of the perimeter. Officer Mott negotiated a southbound turn onto

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<sup>7</sup> Mott, Page 9, Lines 11-15.

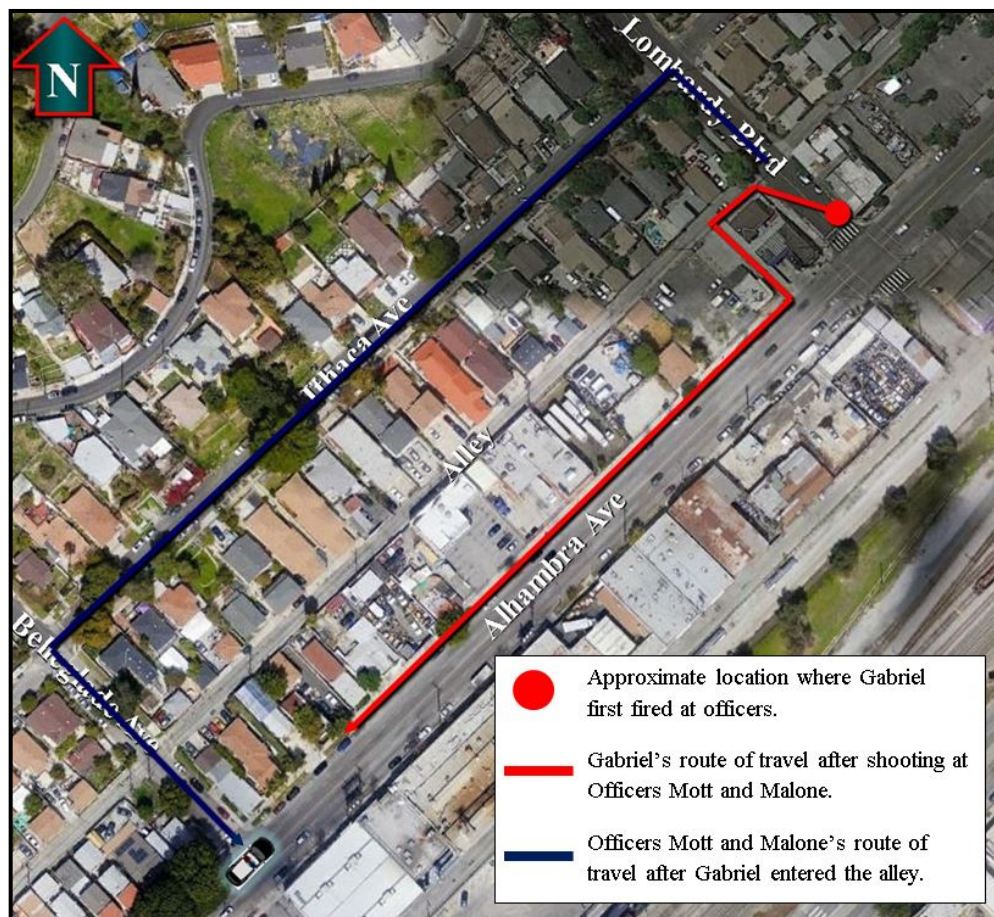
<sup>8</sup> Malone, Page 7, Lines 22-23.



Belleglade and momentarily stopped at the east/west alley. The officers did not see Gabriel and continued south toward Alhambra Avenue.

At 2319:18 hours, Officer Malone's BWV captured Police Officer II+6 Michael Digangi, Serial No. 40679, Pilot, and Police Officer II+5 Ronald Sanchez, Serial No. 37805, Tactical Flight Officer (TFO), Unit Air 18, Air Support Division (ASD), arriving overhead as Officer Malone requested an airship. The airship continued east toward Lombardy Boulevard. Officers Mott and Malone had arrived at the intersection of Belleglade and Alhambra at which time Officer Mott observed Gabriel walking west on Alhambra, on the north sidewalk, towards their direction.

**Note:** Officers Mott and Malone did not update their location.



**Diagram depicting Gabriel's route of travel after he shot at Officer's Mott and Malone**

Officer Mott positioned the police vehicle facing east on Alhambra Avenue in the westbound lanes of traffic at Belleglade Avenue. Officer Mott's BWV captured him telling Officer Malone, "Right here." Officer Malone did not immediately see the suspect and could be heard on BWV repeatedly asking, "Where?" Officers Mott and Malone exited their police vehicle as Officer Mott pointed his pistol in an easterly direction and



illuminated the north sidewalk with the tactical light attached to his pistol. Officer Mott left his position behind his ballistic door, began to walk east toward the north sidewalk of Alhambra Avenue as he told Officer Malone, "Right here on the sidewalk."

**Note:** According to Officer Mott, he left his police vehicle and was making his way to a building located on the northeast corner of the intersection.

According to Officer Malone, he could not see Gabriel and left his police vehicle in an attempt to obtain a visual of Gabriel. Additionally, he indicated the police vehicle was a visible target and thought it would be better to take cover behind vehicles that were parked along the north curb of Alhambra Avenue.<sup>9</sup> Officer Malone pointed his pistol in an easterly direction along the north sidewalk of Alhambra and began to walk east in the westbound lanes of traffic. At 2319:31 hours, Officer Malone broadcast, "We got a possible suspect. He's going to be on Alhambra..."

At 2319:33 hours, as Officer Malone was broadcasting, the BWV's worn by Officers Mott and Malone captured the audible sound of Gabriel firing a round at the officers. Upon hearing the gunshot, Officer Mott took a two-hand shooting position on the north sidewalk of Alhambra at Belleglade Avenue, illuminated the north sidewalk with the tactical light attached to his pistol and fired two rounds in an easterly direction. Officer Mott stated he had a visual of Gabriel and was firing at his center mass.

Officer Malone continued to broadcast, "Shots fired...still shooting." Hollenbeck frequency captured the audible sound of gunfire as Officer Malone was broadcasting. Communications Division broadcast, "All units, Officer Needs Help, Lombardy and Alhambra. Officer Needs Help, Lombardy and Alhambra, shots fired."

**Note:** Officer Malone's broadcast was interrupted by gunfire. As such, he was unable to finish updating their location. Communications Division broadcast that the officers were at Lombardy and Alhambra when they were actually at Belleglade and Alhambra.

According to Officer Malone, "*When I start to redeploy from the police vehicle that's when I hear the shot. I see the muzzle flash and it illuminates the suspect and I saw the suspect firing at my partner. At that point, I redeployed back towards cover behind the police vehicle.*"<sup>10</sup> Officer Malone walked swiftly backwards toward his police vehicle and then asked Officer Mott, "Where's he at Adam?"

At 2319:36 hours, Officer Mott's BWV captured the audible sound of Gabriel firing a second round. According to Officer Mott, "*I return fire and he then makes his way to a tree and takes cover behind a tree and starts firing again.*"<sup>11</sup> In order to get a better visual of Gabriel, Officer Mott positioned himself on top of an approximately two-foot-

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<sup>9</sup> Malone, Page 19, Lines 15-20.

<sup>10</sup> *Id.*, Page 8, Lines 19-23.

<sup>11</sup> Mott, Page 10, Lines 7-8.

high retaining wall, located at 5115 Alhambra Avenue. At the same time, Officer Malone asked Officer Mott once again where Gabriel was located. Officer Mott replied, "Up the tree." At 2319:40 hours, in response to the second round being fired by Gabriel, Officer Mott continued to illuminate the north sidewalk with the tactical light attached to his pistol and fired two additional rounds in an easterly direction towards Gabriel, who was standing behind a tree, located in front of 5127 Alhambra Avenue.

**Note:** The airship was not overhead at the time of this OIS. Officer Malone's BWV captured the airship in the area of Alhambra Avenue and Lombardy Boulevard. According to TFO Sanchez, he directed the pilot to Alhambra and Lombardy based on the initial broadcast for help.

At 2319:42 hours, Officer Mott's BWV captured the audible sound of Gabriel firing a third round. Evidence revealed the bullet continued past Officer Mott as his BWV captured the audible sound of the bullet shattering the window of a convenience store window located behind him at 5111 Alhambra Avenue.

At 2319:44 hours, Officer Malone fired seven consecutive rounds from his pistol. According to Officer Malone, *"I still see the suspect and that's when to protect myself and my partner from the eminent threat of death or serious bodily injury I fired to stop the threat."*<sup>12</sup> Officer Malone was positioned toward the outer edge of his police vehicle's open front passenger side door.

**Note:** Officer Malone fired a total of seven rounds. Firearms Examiner Arredondo determined that the discharged cartridge cases collected, Item Nos. 4-10, were fired from Officer Malone's pistol (Addendum No. 2).

At 2319:46 hours, Officer Mott fired four additional rounds in an easterly direction. Officer Mott was still positioned on top of the retaining wall. Although this position did not appear to provide him any cover, Officer Mott stated it gave him an elevated platform and a better visual of the suspect. According to Officer Mott, *"As he continues to fire, he -- I hear the-- a window to the building that's on the northwest corner of Alhambra and Belleglade shatter and I return fire again."*<sup>13</sup>

At 2319:50 hours, after Officer Malone discharged his rounds, Officer Malone broadcast, "He's going to be on Alhambra just east of Belleglade. North side of the street."

**Note:** Video surveillance footage from 5137 Alhambra Avenue captured Gabriel running west on Alhambra, taking cover behind a tree in front of 5127 Alhambra and three muzzle flashes emanating from his pistol.<sup>14</sup>

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<sup>12</sup> Malone, Page 8, Lines 23-25 and Page 9, Line 1.

<sup>13</sup> Mott, Page 10, Lines 12-14.

<sup>14</sup> The video was booked under Control No. 746789.

Officer Mott discharged a total of eight rounds. Firearms Examiner Arredondo determined that the discharged cartridge cases collected, Item Nos. 11-18, were fired from Officer Mott's pistol (Addendum No. 2).

Three discharged 9mm cartridge cases (Item Nos. 27-29) and four live 9mm cartridges (Item Nos. 38-41) were recovered from the sidewalk, planter and driveway area of 5129 Alhambra Avenue. Firearms Examiner Arredondo determined the three discharged cartridge cases were fired from Gabriel's pistol. As of the date of this report, Cycle Mark Comparison results on the above-mentioned live cartridges (Item Nos. 38-41) are pending (Addendum No. 2).

**Below is an account of the individual officers' actions during the OIS and their reasoning for the Use of Deadly Force:**

**Officer Mott** was the driver of Shop No. 80601 when he observed Gabriel walking west on Alhambra Avenue toward Belleglade Avenue, in their direction. According to Officer Mott, *"I get out and make my way to the corner of the building that's on the northeast corner of Belleglade and Alhambra at which point he begins firing at me. I return fire and he then makes his way to a tree and takes cover behind a tree and starts firing again. In order to get a better visual on him there's an elevated platform just to my left. I get on top of the elevated platform. As he continues to fire, he -- I hear the -- a window to the building that's on the northwest corner of Alhambra and Belleglade shatter and I return fire again. I then get off the elevated platform and he starts running southbound across Alhambra and then goes eastbound on the south sidewalk."*<sup>15</sup>

**Note:** Officer Mott left his position of cover behind his ballistic door and fired all eight rounds from positions that did not appear to provide cover.

Force Investigation Division investigators asked Officer Mott what his background consisted of at the time of the OIS and he stated, *"Just being familiar with the area I know, you know, it's a -- it's a open street and there's a few -- a couple cars behind him."*<sup>16</sup>

Officer Mott fired the first two rounds in an easterly direction from an approximate distance of 133 feet 6 inches. Officer Mott fired rounds three through eight in an easterly direction from an approximate distance of 131 feet 8 inches.

**Officer Malone** was the front passenger of Shop No. 80601 when they stopped at Alhambra and Belleglade Avenues. According to Officer Malone, *"And I remember Adam saying, 'There he is.' We deployed from the car. I'm asking him where he's at if he has eyes on him because at that point I couldn't -- I couldn't see him. I -- I just remember hearing -- I -- I remember Adam try -- saying something but I couldn't make*

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<sup>15</sup> Mott, Page 10, Lines 4-17.

<sup>16</sup> *Id.*, Page 28, Lines 22-24.

*out what it was. So, to get better eyes I then walked away from the vehicle but there was a line of cars parked on the north side of the curb. So, I was going to redeploy to maintain cover with those cars and see if I could see where the suspect was.*

*When I start to redeploy from the police vehicle that's when I hear the shot. I see the muzzle flash and it illuminates the suspect and I saw the suspect firing at my partner. At that point, I redeployed back towards cover behind the police vehicle. I still see the suspect and that's when to protect myself and my partner from the eminent threat of death or serious bodily injury I fired to stop the threat.”<sup>17</sup>*

Force Investigation Division investigators asked Officer Malone what his background consisted of at the time of the OIS and he stated, *“Background would have been the tree and then I believe it's a weed shop back there. I don't know if it was -- if it's residential directly behind it or there's a business also over there.”<sup>18</sup>*

Officer Malone fired in an easterly direction from an approximate distance of 152 feet.

**OIG Note No. 1:** *According to Officer Malone, “After I shoot, I reassess and asking Adam where -- if he sees him, where he's at. If he has any -- any -- anything. We then observe the suspect starting to run eastbound in east south direction.”<sup>19</sup>*

At this point, Gabriel began to run east on the north sidewalk of Alhambra Avenue toward Lombardy Boulevard. At 2319:54 hours, Officer Mott broadcast, “Eastbound airship. Eastbound airship.” At 2319:56 hours, Officer Malone's BWV captured his broadcast, “He's running eastbound on Alhambra from Belle Glade. Running back towards Lombardy. Male Hispanic, black hoodie, blue jeans...semi-auto handgun.”

**Note:** Hollenbeck frequency did not capture Officer Malone's entire broadcast. The frequency captured, “Alhambra from Belle Glade. Running back towards Lombardy. Male Hispanic, black hoodie, blue jeans, semi-auto handgun.”

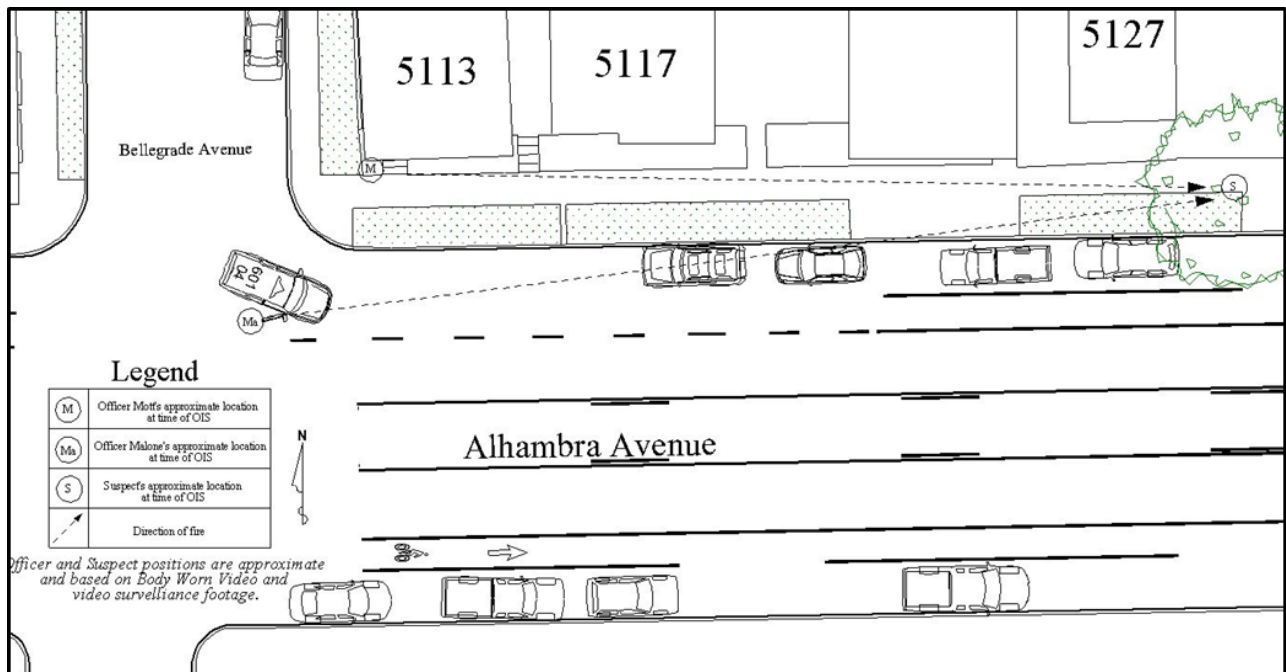
Although the time depicted is inaccurate, the surveillance video footage from Ideal Cabinets, located at 5110 Alhambra Avenue, captured the OIS incident. At the timestamp 02:19:51, the Ideal Cabinets video depicts Officer Mott firing approximately two rounds at Gabriel as he ran in the opposite direction. Officer Mott stated he fired his final rounds as Gabriel was positioned behind a tree and did not see Gabriel running.

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<sup>17</sup> Malone, Page 8 Lines 8-25 and Page 9 Line 1.

<sup>18</sup> *Id.*, Page 38, Lines 6- 9.

<sup>19</sup> *Id.*, Page 9, Lines 2-5.



**The diagram illustrates the direction of fire by Officers Mott and Malone and their approximate location.**

At 2320:06 hours, TFO Sanchez broadcast, "Hey guys give me a light." Officer Mott's BWV depicts the airship was still overhead in the area of Alhambra Avenue and Lombardy Boulevard. As Gabriel ran east, Officers Mott and Malone re-entered their police vehicle and headed east on Alhambra. Video footage from 5137 Alhambra Avenue captured Gabriel running east on Alhambra on the north sidewalk with what appears to be a gun in his right hand. At 2320:11 hours, Officer Mott broadcast, "Southbound across the street. Southbound airship. Come back westbound."

**Note:** According to Officer Mott, he observed Gabriel run south, across Alhambra Avenue, and then continue east on the south sidewalk.

[This section intentionally left blank.]



**Closed-circuit television screen shot depicting Gabriel running east on Alhambra Avenue with what appears to be a gun in his right hand**

Meanwhile, Witness Cruz Osornio Gonzalez, 65 years of age, was traveling in his vehicle east on Alhambra Avenue toward Lombardy Boulevard when he observed Gabriel appear from the north side of Alhambra, in the area of 5157 Alhambra Avenue. Gonzalez stated Gabriel walked south across Alhambra and, as Gonzalez got closer, observed Gabriel point a gun in his direction. Fearing Gabriel was going to shoot him, Gonzalez stated he ducked and continued driving east on Alhambra.

**Note:** An Assault with a Deadly Weapon (ADW) with a Firearm Investigative Report (IR), listing Cruz Osornio Gonzalez as the victim, was completed and assigned Division of Records (DR) No. 1904-13611 (Addendum No. 3).

Officer Mott drove east toward Gabriel as Officer Malone broadcast, "He's going to be on the south side of Alhambra now. He's barricaded behind a diesel truck." Officers Mott and Malone's BWV depicts the officers still had their pistols unholstered and in their hands as they drove east on Alhambra while keeping distance between themselves and Gabriel.

At 2320:28 hours, Officer Mott stopped the police vehicle in front of 5141 Alhambra Avenue. Officers Mott and Malone exited their police vehicle and began to follow Gabriel on foot while keeping distance between themselves and Gabriel.

Once Gabriel arrived on the south sidewalk of Alhambra Avenue, he began to walk east on Alhambra while removing clothing. According to Officer Mott, "*The suspect is now shedding clothing. He takes off the black -- black hoodie that he had on and down to a white shirt. He had a white T-shirt on.*"<sup>20</sup> At 2320:34 hours, Officer Mott's BWV

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<sup>20</sup> Mott, Page 10 Line 25 and Page 11 Lines 1-2.

captured Officer Mott broadcast, "Airship, airship he shed, he shed the jacket, he shed the jacket. Come back westbound airship."

**Note:** Hollenbeck frequency did not capture Officer Mott's broadcast.

At 2320:37 hours, Officer Malone broadcast, "He just, he just took his black hoodie off. He's got a white shirt on."

**Note:** A black hooded sweatshirt and black hat were recovered from the front planter of Lin's Auto Dismantling, located at 5166 Alhambra Avenue, which was along the path that Gabriel took.

In the interim, Officer Mencias, driver, and Officer Hernandez, passenger, were assigned to Unit 4Q2, working the Violent Crime Reduction Task Force overtime detail.<sup>21</sup> The officers were in Shop No. 88264, a marked black and white police vehicle equipped with a DICVS.

**Note:** This was the first time Officers Mencias and Hernandez had worked together. Officers Mencias and Hernandez could not recall if they had any discussions regarding tactics before they began to patrol.

At approximately 2320:56 hours, the DICVS to Shop No. 88264 captured Officer Mencias negotiating a westbound turn onto Alhambra Avenue from Lombardy. At this point in time, Gabriel was on the south sidewalk of Alhambra walking east toward Lombardy. Meanwhile, Officer Mott was attempting to direct the airship towards the suspect when he observed Officers Mencias and Hernandez' police vehicle negotiating a westbound turn onto Alhambra.

At 2320:57 hours, Officer Mott broadcast, "Unit stop right there, stop right there, stop right there...Just south of you, stop right there. He's behind you, he's behind you." Officer Mencias stopped the police vehicle in front of 5180 Alhambra Avenue at which time Officers Mencias and Hernandez exited their police vehicle. According to Officer Hernandez, he heard Officer Mott broadcast, "Behind you," and then turned east toward the rear of his police vehicle unholstering his pistol. Officer Hernandez was asked why he unholstered his pistol and he stated, "*Due to the nature of the call, sir. It was a man with a gun firing at officers. That's basic -- it was a tactical situation where deadly force would have been justified.*"<sup>22</sup>

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<sup>21</sup> Officer Mencias, 16 years, one month with the Department, 44 years of age, 5 feet, 7 inches tall, 170 pounds. Officer Hernandez, one year with the Department, 22 years of age, 6 feet tall, 185 pounds. Officers Mencias and Hernandez were wearing ballistic vests and had Department-approved handguns, handcuffs, TASERS, DICVS microphones, BWV and canisters of OC spray attached to their Sam Browne equipment belts. The officers had their side-handle batons inside their police vehicle. Officer Hernandez had his HRD on his person. Officer Mencias did not have a HRD.

<sup>22</sup> Hernandez, Page 13, Lines 24-25 and Page 14, Lines 1-2.



According to Officer Hernandez, he observed Gabriel standing on the south side of Alhambra Avenue, staring straight at him and pointing a firearm in his direction. At 2321:03 hours, Officer Hernandez fired a round, took cover behind his police vehicle and noticed the firearm still pointed in his direction. Officer Hernandez continued to fire until the suspect fell to the ground. Officer Hernandez stated, *"I pretty much ducked to try to get more in cover just because the firearm was pointed straight at me. So, I fired, tried to get back in cover, came back out, seen that --the firearm was still pointed at me and that's when I fired."*<sup>23 24</sup>

**OIG Note No. 2:** According to Officer Hernandez, *"The suspect was holding the gun in a shooting -- in a shooting motion. His hands were raised towards his upper chest and you could see the pistol pointed at in like at me. His face, his whole-body shooting stance and he was -- he was locked on me."*<sup>25</sup>

Officer Hernandez also stated, *"I -- fired what I believed is I fired one round, took cover, came back and fired four more rounds."*<sup>26</sup> He indicated that he stopped firing when *"the threat was stopped"* as Gabriel *"basically like fell."*<sup>27</sup>

**Note:** Gabriel did not fire at the officers at this time. This determination was made by viewing Officer Hernandez' BWV, which did not capture any audible sounds of Gabriel firing a round. In addition, there were no discharged cartridge cases located in the area where Gabriel was standing and his pistol was discovered in the slide lock condition with an empty magazine inserted and the pistol's firing chamber empty. Throughout this entire incident, it was determined that Gabriel discharged a total of four rounds at Officers Mott and Malone.

Officer Hernandez fired a total of seven rounds in a southeasterly direction from an approximate distance of 53 feet. Officer Hernandez' BWV did not capture Gabriel's actions at the time of the OIS due to his position and angle behind the rear portion of the police vehicle.

**Note:** Officer Hernandez fired all seven rounds in approximately two seconds. The audio from the Brooklyn Smog Center video captured a single gunshot, a pause and then six additional gunshots.

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<sup>23</sup> Hernandez, Page 16, Lines 14-18.

<sup>24</sup> Artificial illumination was provided by an overhanging streetlight located on the south sidewalk and in front of 5180 Alhambra Avenue, approximately 12 feet west of where Gabriel was standing.

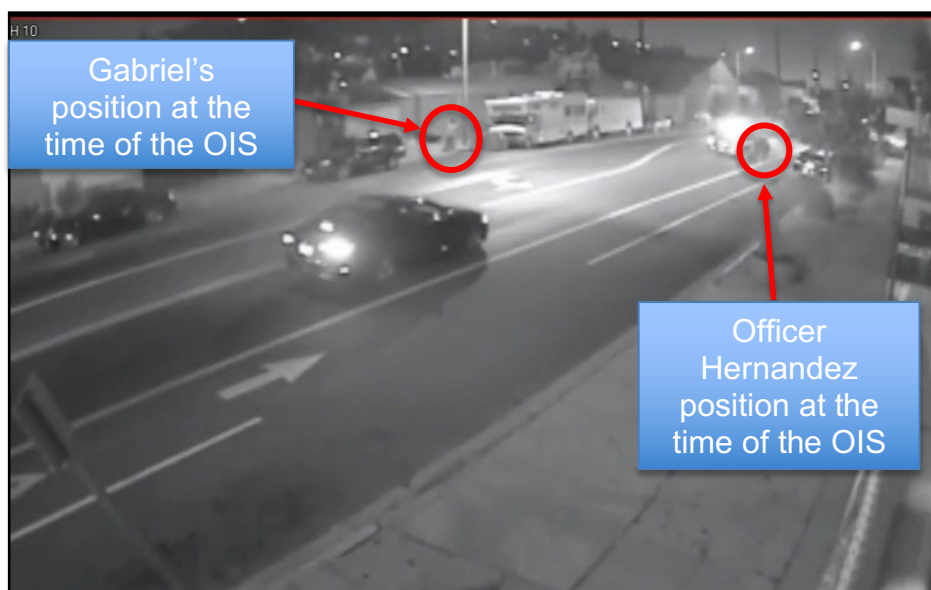
<sup>25</sup> Hernandez, Page 24, Lines 9-13.

<sup>26</sup> *Id.*, Page 16, Lines 2-4.

<sup>27</sup> *Id.*, Page 24, Lines 17-25.

According to Officer Mencias, he exited the police vehicle and heard a gunshot followed by a volley of gunshots. Based on the investigation, it was determined these gunshots were attributed to Officer Hernandez. Believing the suspect was shooting at them, Officer Mencias' BWV depicts him running approximately 20 yards west on Alhambra Avenue and unholstering his pistol. Officer Mencias turned east, pointed his pistol toward the south sidewalk and then walked east joining Officer Hernandez, who was still positioned near the right rear quarter panel of his police vehicle. Officer Mencias stated he could not see Gabriel when the gunshots began.

**Note:** Video surveillance footage from the Brooklyn Smog Center captured the audible sounds of gunfire and the OIS incident. The video footage captured Gabriel walking east on Alhambra on the south sidewalk and then turning and facing the officers while extending his right arm towards the officers



**Brooklyn Smog Center video surveillance screen shot depicting Gabriel and Officer Hernandez' positions at the time of the OIS**

Officers Mott and Malone were west of Officers Mencias and Hernandez' police vehicle at the time of the Hernandez OIS. Officer Mott's BWV depicts he was on foot in the westbound lanes of Alhambra, in front of 5173 Alhambra Avenue, when Officer Hernandez fired his rounds. Officer Mott was approximately 143 feet from Officer Hernandez. Officer Mott stated he did not see the OIS incident. Officer Malone's BWV depicts he was on foot in the eastbound lanes of Alhambra, in front of 5166 Alhambra Avenue, when Officer Hernandez fired his rounds. Officer Malone was approximately 186 feet from Officer Hernandez. Officer Malone stated he heard gunshots but did not see the OIS incident.

As Gabriel lay on the ground, Officer Hernandez communicated with Officer Mencias and told him, "He's down." According to Officer Hernandez, he observed Gabriel

moving his arms, as if attempting to re-arm himself. At 2321:11 hours, Officer Hernandez' BWV depicts what appears to be Gabriel moving his right arm and then Officer Hernandez telling Gabriel, "Don't reach for the fucking gun." (Investigators' Note No. 3).

Meanwhile, as Officers Mencias and Hernandez were positioned near the right rear quarter panel of their police vehicle and pointing their pistols south toward Gabriel, Officers Artiaga and Arias arrived in Shop No. 81487, a marked black and white police SUV equipped with ballistic door panels and a DICVS. Officers Mencias and Hernandez' BWVs depict Shop No. 81487 traveling west on Alhambra and crossing the muzzle path of their pistols.

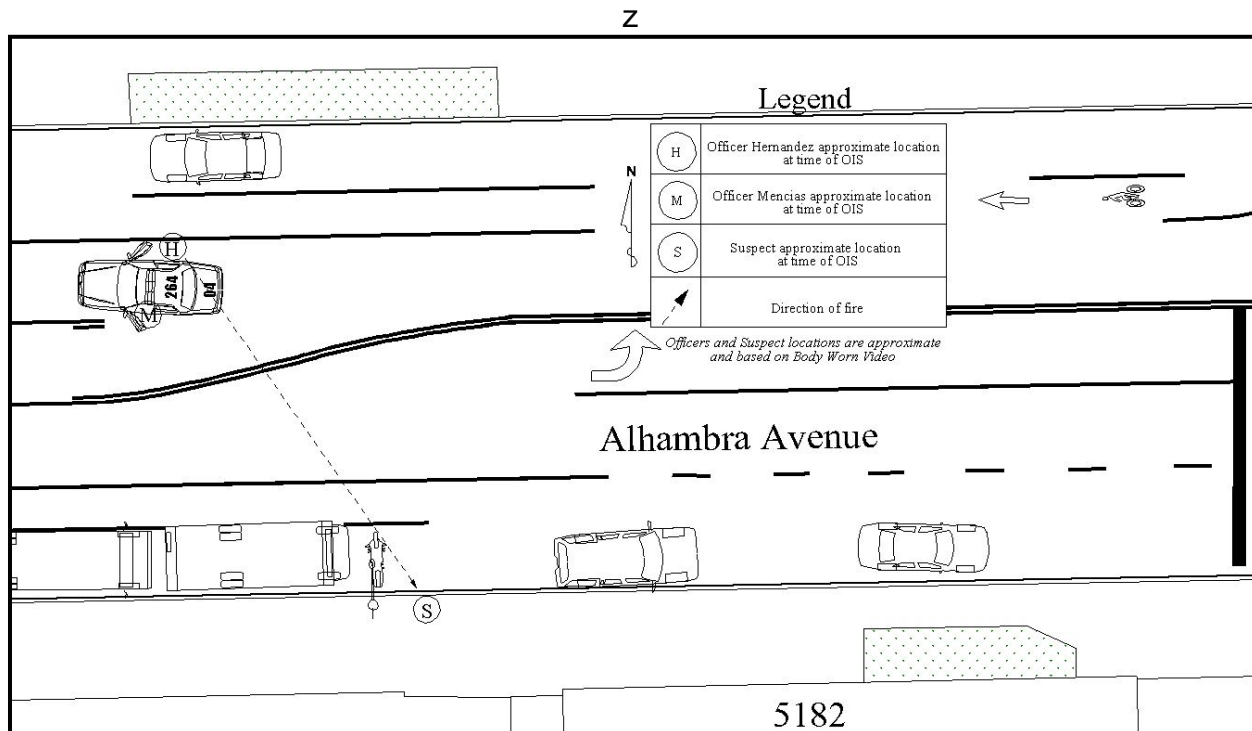
According to Officer Artiaga, *"As we -- as we got closer we didn't know and hadn't realized that the officers came back in the opposite direction that they were going so now they're -- instead of going westbound they were going eastbound. Once I noticed that they were going eastbound, since I was traveling Code 3 and a higher speed than - I'm not sure of the speed but the speed that I was going at, it felt that it was unsafe to try to stop and if I did stop it would be in between the line of fire that the Officer Malone, Officer Mott, Officer Mendez and Officer Mencias were pointing their guns at. So if I would have tried to stop or would have stopped, it would have been right in front of them."*<sup>28</sup>

**Note:** Officer Artiaga inaccurately identified Officer Hernandez as Officer Mendez.

[This section intentionally left blank.]

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<sup>28</sup> Artiaga, Page 9, Lines 10-22.



**The diagram illustrates the direction of fire by Officer Hernandez and his approximate location.**

Officers Artiaga and Arias continued west and stopped facing south in front of 5180 Alhambra Avenue. Once the police vehicle passed Officers Mencias and Hernandez, Officers Mencias and Hernandez began to approach Gabriel with their pistols still unholstered. As they did so, they ordered Gabriel not to move. Officers Mott and Malone, who were following Gabriel from a distance and who still had their pistols unholstered, joined Officers Mencias and Hernandez. According to TFO Sanchez, he acquired the officers' location as the officers were making their approach towards Gabriel.

At 2321:25 hours, as the officers approached Gabriel, Officer Malone's BWV captured his broadcast, "Let me get a RA rolling. Male Hispanic, probably 30 years old, conscious and breathing, several gunshot wounds to the chest."

**Note:** Hollenbeck frequency did not capture Officer Malone's broadcast.

From the time Officer Hernandez began to fire until Officer Malone requested a Rescue Ambulance (RA), approximately 22 seconds had elapsed.

As Officers Mencias, Hernandez, Mott and Malone approached Gabriel, Officer Mencias told Officer Hernandez to take Gabriel into custody. It was at this time that Officer Hernandez holstered his pistol. According to Officer Mott, he observed Gabriel moving and a gun was approximately two feet from Gabriel. Officer Mott stated he noticed the

gun in the slide lock condition and then placed his left foot on the gun to prevent Gabriel from re-arming himself. Officer Malone's BWV captured Officer Mott placing his left foot on the gun and sliding the gun away from Gabriel, approximately two feet in a northern direction. Officer Hernandez secured Gabriel's right arm, turned and placed Gabriel onto his stomach and handcuffed him. Officers Mencias, Mott and Malone then holstered their pistols.

**Note:** At 2321:27 hours, Officer Mencias' BWV captures Gabriel's pistol in the slide lock condition.



**Screenshot from Officer Mencias BWV depicting the gun in the slide stop condition**

At approximately 2321:38 hours, TFO Sanchez broadcast, "And control. Get an RA rolling and have them stage at Alhambra and Belleglade." At 2321:47 hours, Officer Malone broadcast, "Q26, Code Four. All officers accounted for. I need a RA rolling. Alhambra, west of Lombardy. Male Hispanic, 30 years of age, conscious and breathing. Gunshot wound to the chest."

**Note:** Hollenbeck frequency did not capture Officer Malone's entire broadcast. The frequency captured, "Male Hispanic, 30 years of age, conscious and breathing. Gunshot wound to the chest."

The time of TFO Sanchez' RA request was determined by reviewing Hollenbeck frequency and identifying that TFO Sanchez requested a RA approximately nine seconds prior to Officer Malone's second RA request. Officer Malone's request time was determined by reviewing his BWV.

At 2321:57 hours, CD broadcast, "4A53, roger on the RA request. Alhambra and Belleglade."

**Note:** Communications Division incorrectly identified Officer Malone as Unit 4A53. Officer Malone was assigned to Unit 4Q26.

At 2327:35 hours, Los Angeles Fire Department (LAFD) Engine No. 16, staffed by Captain Thomas Rindge, Engineer Jared Hart, Firefighter/Paramedic Frank Gomez, and Firefighter Andrew Vilchis; and RA No. 47, staffed by Firefighter/Paramedics Frank Bish and Edmundo Villarreal, received the alarm to respond to 2300 North Belleglade Avenue at Alhambra Avenue (Addendum No. 4).

At 2332:24 hours, the DICVS in Shop No. 88264 depicts Engine No. 16 arriving at scene. At 2338:36 hours, it depicts RA No. 47 arriving at scene.

Firefighter/Paramedics Gomez, Bish and Villarreal provided emergency medical treatment to Gabriel for gunshot wounds to his upper torso.

**Note:** Approximately 10 minutes, 59 seconds elapsed from the time Officer Malone requested an RA until Engine No. 16 arrived at scene.

At 2343:34 hours, the DICVS in Shop No. 81487 depicts Gabriel being transported to Los Angeles County-University of Southern California Medical Center (LACUSCMC). Upon arrival at the hospital, Gabriel was rushed into the emergency room where lifesaving protocols were initiated by Doctor Brittany Grzybowski. Gabriel did not respond to the treatment and on August 19, 2019, at 0017 hours, Doctor Grzybowski pronounced death.

At 2346 hours, the Department Operations Center (DOC) was notified of the Categorical Use of Force Incident (Addendum No. 5).

On August 19, 2019, at approximately 0150 hours, Police Officer II David Chou, Serial No. 37776, FID, Investigative Support Unit (ISU), was the first representative from FID to arrive at scene.

Detective II Michael Arteaga, Serial No. 32722, FID, reviewed all documents and circumstances surrounding the separation, monitoring and the admonition for the involved officers not to discuss the incident prior to being interviewed by FID investigators. Actions related to these protocols and pertinent supervisor assessments were documented (Addendum No. 6).

## **Scene Description**

The OIS incidents occurred in the 5100 block of Alhambra Avenue, in the El Sereno area of Hollenbeck Division. Alhambra Avenue is an east/west roadway with a single lane of traffic in each direction and vehicle parking along the north and south curbs. Alhambra Avenue measured 55 feet, 10 inches in width, with a concrete sidewalk on the north side of the street measuring approximately five feet in width and a grass parkway measuring 5 feet, 10 inches in width. The neighborhood consisted of single-family residences and several closed businesses.

The incident began at 2318 hours at the intersection of Alhambra Avenue and Lombardy Boulevard, on the north side of the intersection, when Gabriel was walking in the east/west crosswalk and fired one round at Officers Mott and Malone.



The first OIS incident occurred during the hours of darkness at 2319 hours. Officer Mott was standing at the northeast corner of Alhambra and Belleglade Avenues, while Officer Malone was standing in the westbound lane of traffic of Alhambra at Belleglade. Gabriel was standing near a medium sized tree located in front of 5127 Alhambra Avenue. Artificial illumination was provided by the tactical lights attached to Officers Mott and Malone's service pistols and by an overhanging streetlight on the north sidewalk in front of 5123 Alhambra Avenue.

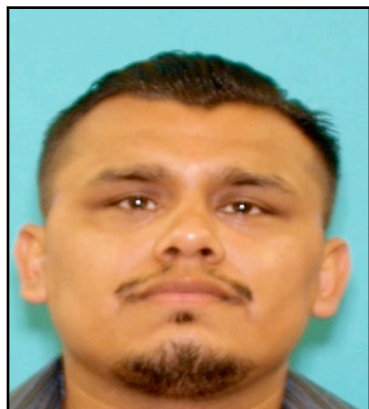
The second OIS incident occurred at 2321 hours, in front of 5182 Alhambra Avenue. Officer Hernandez was standing in the westbound lane of traffic of Alhambra Avenue, while Gabriel was standing in the driveway of 5182 Alhambra, with police vehicle Shop No.88264 between them. Artificial illumination was provided by an overhanging streetlight located on the south sidewalk and in front of 5180 Alhambra, approximately 12 feet west of where Gabriel was standing.

The environmental conditions were dry with clear skies.

### **Canvass for Witnesses**

On August 18 and 19, 2019, FID and Hollenbeck Area personnel canvassed the areas of Alhambra Avenue, Lombardy Boulevard and Belleglade Avenue for witnesses to the OIS. On August 21, 2019, FID personnel conducted an additional canvass of the area. There were a total of two witnesses who were identified by FID and Hollenbeck personnel. Unless otherwise noted, the statements of all witnesses were transcribed and are contained in this investigation.

### **Suspect Information**



**Roberto Rene Gabriel**, male Hispanic with black hair and brown eyes. At the time of the incident, he was five feet, eight inches tall, weighed 192 pounds and had a date of birth of April 20, 1986. Gabriel was identified by CII No. A22396891. Gabriel had the tattoos "Sereno" on his stomach and "Lockero" on his upper back which is associated with the El Sereno criminal street gang. Gabriel's Los Angeles County consolidated criminal history system transcript indicates Gabriel was known by the moniker of "Gizmo." Gabriel was not the subject of any Mental Evaluation Unit contacts.

Gabriel's criminal history began at the age of 14, when he was arrested on December 7, 2000, for having a knife on school grounds. On May 8, 2007, Gabriel was convicted for carrying a concealed weapon and sentenced to 60 days in county jail. On May 10, 2007, Gabriel was convicted for vandalism and sentenced to 30 days in county jail. In July 2008, Gabriel was convicted for robbery and sentenced to seven years in state prison. In February 2014, Gabriel was convicted for evading a police officer and



possessing an assault weapon and sentenced to four years in state prison (Addendum No. 7).

On June 30, 2017, Gabriel was discharged from the California Rehabilitation Center in Norco and released to the Los Angeles County Probation Department. Gabriel was not on parole or probation at the time of this incident.

A Los Angeles Police Department IR for Attempted Murder was completed by FID investigators for Officers Mott, Malone, and Hernandez, naming Roberto Rene Gabriel as the suspect (Addenda Nos. 1 and 8.)

On August 27, 2019, Detective Arteaga completed a Follow-up IR for the above listed Attempted Murders and for the ADW with a Firearm on Cruz Osornio Gonzalez with a case status of Cleared Other (Addendum No. 9).

## **Injuries**

At 2321:25 hours, as Officers Mencias, Hernandez, Mott and Malone approached Gabriel to handcuff him, Officer Malone's BWV captured his broadcast, "Let me get a RA rolling. Male Hispanic, probably 30 years old, conscious and breathing, several gunshot wounds to the chest."

**Note:** Hollenbeck frequency did not capture Officer Malone's broadcast.

At approximately 2321:38 hours, TFO Sanchez broadcast, "And control. Get an RA rolling and have them stage at Alhambra and Belleglade." At 2321:47 hours, Officer Malone broadcast, "Q26, Code Four. All officers accounted for. I need a RA rolling. Alhambra, west of Lombardy. Male Hispanic, 30 years of age, conscious and breathing. Gunshot wound to the chest."

At 2327:35 hours, LAFD Engine No. 16, staffed by Captain Rindge, Engineer Hart, Firefighter/Paramedic Gomez, and Firefighter Vilchis; and RA No. 47, staffed by Firefighter/Paramedics Bish and Villarreal, received the alarm to respond to 2300 North Belleglade Avenue at Alhambra Avenue (Addendum No. 4).

At 2332:24 hours, the DICVS to Shop No. 88264 depicts Engine No. 16 arriving at scene. At 2338:36 hours, it depicts RA No. 47 arriving at scene. Firefighter/Paramedics Gomez, Bish and Villarreal provided emergency medical treatment to Gabriel for gunshot wounds to his upper torso.

**Note:** Approximately 10 minutes, 59 seconds elapsed from the time Officer Malone requested an RA until Engine No. 16 arrived at scene.

At 2343:34 hours, the DICVS in Shop No. 81487, captured Gabriel being transported to LACUSCMC. Hollenbeck Division uniformed Police Officer I Jessica Solis, Serial No. 43782, accompanied Gabriel to the hospital as the rear passenger in the RA, and uniformed Police Officer III Rudy Gonzalez, Serial No. 37014, followed the RA in his police vehicle. Upon arrival to the hospital, Gabriel was rushed into the emergency room where lifesaving protocols were initiated by Doctor Grzybowski. Gabriel did not

respond to the treatment and on August 19, 2019, at 0017 hours, Doctor Grzybowski pronounced death.

**Note:** According to Firefighter/Paramedic Bish, Gabriel did not show any signs of life which included pain stimuli, respirations or a heartbeat as they provided medical treatment. Bish indicated they could have determined death at scene but decided to transport Gabriel to the hospital for additional life saving measures since it was in close proximity to the scene.

## **Evidence**

On August 19, 2019, at approximately 0400 hours, FAU Supervising Criminalist Rafael Garcia, Serial No. G9120, Criminalists II Dyna Shirasaki, Serial No. N4504, Jacob Seror, Serial No. N4571, Matthew Saucedo, Serial No. N4688, and Criminalist I Tracy Ng, Serial No. N4952, responded to the scene and conducted an examination of the OIS scene for ballistic impacts, trajectories and projectiles (Addendum No. 10).

As a result of their examination, 48 items of evidence were collected from the crime scene and booked in conjunction with this investigation under DR No. 1904-13577. Included in those items were a 9mm Luger pistol, Item 2, fired bullet, Item 30, and four discharged cartridge cases from Gabriel's pistol, Items 26 through 29.

On August 19, 2019, Detective II Dimitri Kort, Serial No. 34872, FID, responded to LACUSCMC and obtained Gabriel's belongings. Included in those items was a plastic bag containing an off-white substance resembling methamphetamine, Item 49. A total of 86 items have been booked as evidence regarding this incident (Addendum No. 11).

On September 18, 2019, Criminalist II Wubayehu Tsega, Serial No. N1901, FSD completed an analysis of the off-white substance recovered from Gabriel's property. The off-white substance tested positive for methamphetamine (Addendum No. 12) and (Investigators' Note No. 4).

## **Coroner's Investigation**

### **Coroner's Response**

On August 19, 2019, at 0450 hours, the Los Angeles County Department of Coroner's Office was notified regarding Gabriel's death. On August 19, 2019, at 1420 hours, Los Angeles County Forensic Science Center (LACFSC) Forensic Attendant Michael Sanchez transported Gabriel's remains to LACFSC from LACUSCMC. At 1532 hours, Forensic Attendant Sanchez processed Gabriel's hands for gunshot residue (Addendum No. 13).

## **Autopsy**

On August 21, 2019, Los Angeles County Department of Coroner Deputy Medical Examiner Doctor Kevin Young performed a post-mortem examination of Gabriel's remains. Detectives II Guy Golan, Serial No. 38235, FID, and Kort, and Investigator Wendie Contreras, Justice System Integrity Division (JSID), were present during the examination. Doctor Young concluded Gabriel's death was caused by multiple gunshot wounds. In addition, Doctor Young obtained specimens from Gabriel for toxicological analysis (Addendum No. 14).

Doctor Young determined that Gabriel sustained three gunshot wounds. The wounds were arbitrarily numbered.

**Gunshot Wound No. 1** entered the right side of the chest just below the right nipple. The bullet had a trajectory of front to back, right to left, and upward. The wound path involved the right antero-lateral 6<sup>th</sup> rib, right liver, right diaphragm, right lower lung and exited the back, at nipple level. No bullet was recovered. This wound was deemed fatal.

**Gunshot Wound No. 2** entered the right lateral flank. The bullet had a trajectory of slightly front to back, right to left, and upward. The wound path involved the right posterior lateral 10<sup>th</sup> rib, right diaphragm, right liver, right lower lung, and stopped at the right paraspinal muscle at T9. A deformed bullet was recovered. This wound was deemed fatal.

**Gunshot Wound No. 3** entered the left upper abdomen. The bullet had a trajectory of front to back, slightly left to right, and downward. The wound path involved the omentum, transverse colon, inferior vena cava, and right psoas muscle, and stopped at the right lower back. A deformed bullet was recovered. This wound was deemed fatal.

Note: Firearms Examiner Arredondo determined the two bullets recovered during the autopsy (Item Nos. 68A and 68B) were fired from Officer Hernandez' pistol (Addendum No. 2).

No soot or stippling was observed on any of Gabriel's wounds, which was consistent with the location of the officer at the time of the OIS.

## **Coroner's Test Results**

### **Toxicology**

On September 20, 2019, a Laboratory Analysis Summary Report was approved by Los Angeles County Department of Coroner Supervising Criminalist Sarah Buxton de Quintana. The analysis results documented Gabriel had .24 ug/ml of amphetamine, 1.7 ug/ml of methamphetamine, and .02 g% of alcohol in his blood at the time of his death (Addendum No. 15).

## Gunshot Residue

On January 24, 2020, LACFSC Senior Criminalist Melvina Gin concluded her analysis of the GSR kit. The analysis determined gunshot residue was detected on Gabriel's hands and face. According to the GSR analysis report, Gin concluded Gabriel may have discharged a firearm, been in the vicinity of the discharge of a firearm or touched a surface with gunshot residue on it (Addendum No. 16).

## Clothing Analysis

Criminalist Seror advised a distance determination would not be of value in this case based upon multiple officers firing their service pistols, video evidence and BWV which determined the shooting distance from the officers to the suspect exceeded 10 feet. The clothing worn by Gabriel was booked into evidence and is available if needed for any further analysis.

## Weapons



that the firearm was cocked.

**Roberto Rene Gabriel** was armed with a 9-millimeter Jimenez Arms Model J.A. Nine semiautomatic pistol, Serial No. 252051. The pistol had a black polymer frame with a black slide and black plastic grips. The pistol had a barrel length of approximately four inches. The safety was off and the cocking indicator showed

Gabriel's pistol was found lying on its left side in the driveway of 5182 Alhambra Avenue with the muzzle pointing northwest and the magazine fully inserted. Scuff marks were noted on the left side of the slide/muzzle (Addendum No. 17).

The firearm was recovered and examined by Criminalist Seror. The pistol had a magazine inserted that did not contain any cartridges and the pistol's firing chamber was empty. The magazine was determined to be a large capacity magazine as described in California Penal Code (PC) Section 16740. The capacity of the pistol when fully-loaded was one cartridge in the firing chamber and 12 cartridges in the magazine.

**Note:** Firearms Examiner Arredondo determined there were four discharged cartridge cases recovered at the crime scenes that were attributed to Gabriel's pistol (Addendum No. 2).

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms (ATF) and Explosives Tracing Center conducted a firearm trace on the above pistol. The summary of results determined the pistol was purchased on March 19, 2013, by Brian Jason White, a resident of Las Vegas, Nevada (Addendum No. 18) and (Investigator's Note No. 5).

**Officer Mott** was armed with his Department-issued black polymer 9mm Smith & Wesson Model M&P semiautomatic pistol, Serial No. HLX3173. The pistol was carried in a Department-approved Safariland holster, equipped with a triple-retention feature. The pistol was equipped with a Surefire X300 tactical LED Light. According to Officer Mott, at the time of the OIS, the pistol was loaded to capacity with 18 rounds of Department approved Speer Gold Dot 9mm ammunition. Seventeen rounds were in the magazine and one round was in the firing chamber of the pistol.

On August 19, 2019, at approximately 0504 hours, Detective II Heather Gahry, Serial No. 31089, FID, conducted a post-incident examination of Officer Mott's pistol. She determined the firearm was loaded with one round in the firing chamber and 17 rounds in the magazine. She learned Officer Mott had conducted a tactical reload after Gabriel was handcuffed by removing the magazine in his pistol and replacing it with a 17-round magazine from his magazine pouch. She inspected the magazine that was removed from the pistol during the tactical reload and it was determined the magazine was loaded with nine rounds. She inspected one additional magazine that was carried in Officer Mott's magazine pouch. The magazine was loaded with 17 rounds of the same Department-approved ammunition. Eight discharged cartridge cases, Items 11 through 18, were collected from the sidewalk and street near the intersection of Alhambra and Belleglade Avenues and determined to have been fired from Officer Mott's pistol. This information was consistent with Officer Mott having fired a total of eight rounds during the OIS.

On October 24, 2019, Firearms Examiner Srinivasan Rathinam, Serial No. N3851, FSD, FAU, completed a report documenting the test-firing of Officer Mott's pistol. The trigger pull value for this pistol was within the Department's established range (Addendum No. 19).

Detective Arteaga verified that Officer Mott's 9mm Smith & Wesson pistol was entered into the Department's Firearms Inventory Tracking System (FITS) on February 4, 2016.

**Officer Malone** was armed with his Department-issued black polymer 9mm Smith & Wesson Model M&P semiautomatic pistol, Serial No. HLW0657. The pistol was carried in a Department-approved Safariland holster, equipped with a triple-retention feature. The pistol was equipped with a Surefire TLR-1 tactical LED Light. According to Officer Malone, at the time of the OIS, the pistol was loaded to capacity with 18 rounds of Department approved Speer Gold Dot 9mm ammunition. Seventeen rounds were in the magazine and one round was in the firing chamber of the pistol.

On August 19, 2019, at approximately 0515 hours, Detective Gahry conducted a post-incident examination of Officer Malone's pistol. She determined the firearm was loaded with one round in the firing chamber and ten rounds in the magazine. She also inspected two additional magazines that were carried in Officer Malone's magazine pouch. The magazines were each loaded with 17 rounds of the same Department-approved ammunition. Seven discharged cartridge cases, Items 4 through 10, were collected from the intersection of Alhambra and Belleglade Avenues and determined to

have been fired from Officer Malone's pistol. This information was consistent with Officer Malone having fired a total of seven rounds during the OIS.

On October 24, 2019, Firearms Examiner Arredondo completed a report documenting the test-firing of Officer Malone's pistol. The trigger pull value for this pistol was within the Department's established range (Addendum No. 20).

Detective Arteaga verified that Officer Malone's 9mm Smith & Wesson pistol was entered into FITS on February 4, 2016.

**Officer Hernandez** was armed with his Department-issued black polymer 9mm Smith & Wesson Model M&P semiautomatic pistol, Serial No. HWZ2579. The pistol was carried in a Department-approved Safariland holster, equipped with a triple-retention feature. The pistol was equipped with a Surefire X300 tactical LED Light. According to Officer Hernandez, at the time of the OIS, the pistol was loaded to capacity with 18 rounds of Department approved Speer Gold Dot 9mm ammunition. Seventeen rounds were in the magazine and one round was in the firing chamber of the pistol.

On August 19, 2019, at approximately 0536 hours, Detective Gahry conducted a post-incident examination of Officer Hernandez pistol. She determined the firearm was loaded with one round in the firing chamber and 10 rounds in the magazine. She also inspected two additional magazines that were carried in Officer Hernandez magazine pouch. The magazines were each loaded with 17 rounds of the same Department-approved ammunition. Seven discharged cartridge cases, Items 19 through 25, were collected from the street in front of 5189 Alhambra Avenue and determined to have been fired from Officer Hernandez pistol. This information was consistent with Officer Hernandez having fired a total of seven rounds during the OIS.

On October 24, 2019, Firearms Examiner Arredondo completed a report documenting the test-firing of Officer Hernandez pistol. The trigger pull value for this pistol was within the Department's established range (Addendum No. 21).

Detective Arteaga verified that Officer Hernandez 9mm Smith & Wesson pistol was entered into FITS on April 25, 2017.

### **Firearms Analysis**

The criminalists from FSD FAU identified two non-penetrating impacts (A, A2) and a penetrating impact (A1) on a window on the east exterior wall of 5111 Alhambra Avenue. Pathway A (including impacts A, A1, A2) is consistent with a bullet traveling from south to north, east to west, and in an upward direction.

A penetrating impact (B) and non-penetrating impact (B1) were located on the left rear door window of a silver Land Rover Discovery, parked in front of 5117 Alhambra Avenue. Pathway B (including impacts B, B1) is consistent with a bullet traveling from south to north, west to east and in an upward direction. A perforating impact (C) was located on the front windshield of a blue Hyundai Elantra, parked in front of 5123 Alhambra Avenue. Two perforating impacts (C1, C2) were also located on the left front

headrest and a penetrating impact (C3) was located on the left rear seat backrest of the Hyundai. Pathway C (including impacts C, C1, C2, C3) is consistent with a bullet traveling from south to north, west to east and in a downward direction.

A non-penetrating impact (D) and four penetrating impacts (D1, E, F, G) were located on a tree in front of 5127 Alhambra Avenue. Pathway D (including impacts D, D1) is consistent with a bullet traveling from north to south, west to east and in an upward direction. Pathways E, F, and G are consistent with bullets traveling from west to east. No further directions could be determined due to the condition of the impacts.

A non-penetrating impact (H) was located on the west facing wall of 5137 Alhambra Avenue. Pathway H is consistent with a bullet traveling from south to north and west to east. No further direction could be determined due to the condition of the impact.

Two perforating impacts (I, I1) were located on the left front door window trim just above the ballistic panel of Officers Mott and Malone's police vehicle, Shop No. 80601. Pathway I (including impacts I, I1) is consistent with a bullet traveling from back to front, left to right and in a downward direction with respect to the police vehicle.

**Note:** It should be noted that the police vehicle was moved from its original position when Gabriel fired and struck the left front door window trim.

A perforating impact (J) was located on the black north facing gate of 5182 Alhambra Avenue. Pathway J is consistent with a bullet traveling from north to south, west to east and in an upward direction. Two perforating impacts (K, K1) and a non-penetrating impact (K2) were located on the north wall and stucco trim of 5182 Alhambra Avenue. Pathway K (including impacts K, K1, K2) is consistent with a bullet traveling north to south, west to east and in a downward direction. A perforating impact (L) was also located on the black north facing gate of 5182 Alhambra Avenue. Pathway L is consistent with a bullet traveling from north to south and west to east. No further direction could be determined due to the condition of the impact.

A perforating impact (M) was located on the front wheel fender of a motorcycle parked in front of 5180 Alhambra Avenue. Pathway M is consistent with a bullet traveling from north to south, west to east and in a downward direction (Addendum No. 22).

Criminalist Seror swabbed Gabriel's pistol, Item No. 2, magazine, Item No. 3, eight live cartridges, Item Nos. 36 through 43, an additional magazine recovered from Gabriel's person, Item No. 59, and 12 live cartridges, Item Nos. 60 and 61, for Deoxyribonucleic acid (DNA) collection (Addendum No. 23).

On March 2, 2020, Criminalist III Samantha Tosch, Serial No. N4422, FSD, Serology, concluded the DNA profile obtained from Gabriel's pistol is unsuitable for interpretation (Addendum No. 24).

Due to an insufficient amount of DNA, the swab of the magazine, Item No. 3, and swab of the eight live cartridges, Item Nos. 36 through 43, did not proceed to Short Tandem



Repeat (STR) analysis. Criminalist Tosch concluded the DNA profile obtained from the 12 live cartridges, Item Nos. 60 and 61, is unsuitable for interpretation. None of the DNA profiles obtained during analysis are suitable for entry into the Combined DNA Index System (CODIS).

On October 21, 2019, Forensic Print Specialist III Maria Brion, Serial No. G8280, TID, examined Gabriel's pistol, Item No. 2, and magazine, Item No. 3. A latent print was developed from the inside of the right grip of the handgun (Addendum No. 25).

On November 22, 2019, Forensic Print Specialist II Marina Gonzalez, Serial No. N5177, TID, searched the Los Angeles County Automated Fingerprint Identification System (AFIS), for a viable candidate. As a result of an AFIS search, a latent print comparison was generated to an individual identified as Humberto Tapia (Addendum No. 26) and (Investigator's Note No. 6)

**Note:** The latent print excluded Gabriel and no other latent prints were developed for comparison.

Firearms Examiner Arredondo examined and test-fired Gabriel's pistol and determined that Gabriel's pistol functioned as designed. The capacity of the pistol when fully-loaded was one cartridge in the firing chamber and 12 cartridges in the magazine. The magazine was determined to be a large capacity magazine as described in California Penal Code (PC) Section 16740. The above-fired cartridges from Gabriel's pistol were entered into the National Integrated Ballistics Information Network (NIBIN).

Firearms Examiner Arredondo determined the one DCC collected on Lombardy (Item No. 26) and three collected in the area of 5129 Alhambra Avenue (Item Nos. 27-29), were fired from Gabriel's pistol. Examiner Arredondo also determined the two bullets recovered during the autopsy (Item Nos. 68A and 68B) were fired from Officer Hernandez' pistol (Addendum No. 2).

**Note:** The eight live cartridges recovered during the investigation, Item Nos. 36 through 43, were consistent with the make and caliber discharged from Gabriel's pistol.

## **Vehicles**

The 2015 four-door Ford Police Interceptor, Shop No. 80601, with California Exempt License Plate No. 1454184, sustained minor damage to the top portion of the driver's inner door panel, just above the ballistic panel. According to Senior Mechanic Monty Fanning, Serial No. N4316, Hollenbeck Area, on August 20, 2019, a new door panel was placed on the driver's side door of the police vehicle. The vehicle was then returned to the field.

Photographs of the damage are stored under Control Nos. 0770244 and 0770082 (Investigator's Note No. 7).



**Photograph depicting the bullet impact to the driver inner door panel**

## **Visual Documentation**

### **Digital In-Car Video System (DICVS)**

Force Investigation Division Detectives reviewed the DICVS to ascertain if any DICVS-equipped units responded to this incident. The investigation determined there were a total of 24 police vehicles equipped with DICVS that responded to this incident and activated their DICVS at some point during their response, which included 17 Hollenbeck Area, four Northeast Area, and three Rampart Area police vehicles.

The DICVS from Officers Mott and Malone's police vehicle, Shop No. 80601, was not activated during this incident. However, their BWVs captured their respective OIS incidents. The DICVS from Officers Mencias and Hernandez' police vehicle, Shop No. 88264, captured the officers arriving at scene and the audible sound of Officer Hernandez firing. The camera was not in a position to have captured Officer Hernandez' OIS incident.

### **Body Worn Video (BWV)**

Force Investigation Division Detectives reviewed the BWV system to ascertain if any BWV equipped police officers responded to this incident. The investigation determined there were a total of 38 BWV equipped police officers that responded to this incident, which included 32 Hollenbeck Area officers, three Northeast Area officers, two Rampart Area officers, and one Newton Area officer.

Officers Mott, Malone and Hernandez were wearing BWV that captured their respective OIS incidents. Officer Mencias' BWV captured the audible sound of Officer Hernandez firing.

**Note:** There were a total of 39 BWVs associated with this incident. Out of the 38 police officers that responded, Police Officer II Paola Leal, Serial

No. 41931, Hollenbeck, had two videos associated with this incident. However, none of these videos captured the OIS incidents; only the arrival at scene and interview of Victim Cruz Osornio Gonzalez.

## **Social Media**

Personnel assigned to FID's Cyber Unit monitored social media sites, including YouTube, Facebook, Instagram, and Twitter, from the date of the incident until the submission of this investigative report. No additional evidence, information or witnesses were identified.

## **Other Department Video**

None

## **Outside Video**

On August 19 and 21, 2019, FID investigators canvassed the area of 5100 through 5200 Alhambra Avenue, 2400 block of Lombardy Boulevard, and 2300 block of Belleglade Avenue. The investigators located a business surveillance video from Brooklyn Smog Center and Auto Registration, located at 5197 Alhambra Avenue. Channel 12 of the video system captured Gabriel walking south on Lombardy toward Alhambra and then out of the camera's view. After Gabriel fired at Officers Mott and Malone, the camera captured Gabriel running north on Lombardy and then entering the east/west alley.

Channel 10 of the video system captured the audible sound of a gunshot as Gabriel first fired at Officers Mott and Malone and then depicts Gabriel emerging from the alley onto Alhambra. Shortly thereafter, the video captured Officers Mencias and Hernandez stopping on Alhambra, exiting their police vehicle, as Gabriel turned and faced Officer Hernandez. The video then captures the audible sound of Officer Hernandez firing his service pistol.<sup>29</sup>

Investigators located a residential surveillance video at 5137 Alhambra Avenue which depicts Gabriel running west on Alhambra, taking cover behind a tree, and then three muzzle flashes. Gabriel then runs east on Alhambra toward Lombardy.<sup>30</sup>

Investigators located a business surveillance video from Organica Creations, located at 5201 Alhambra Avenue. The video captured Gabriel walking south on Lombardy Boulevard and arriving at Alhambra Avenue. Gabriel walks west in the crosswalk and then begins to walk north on Lombardy. Suddenly, Gabriel pulls out a handgun and fires a round at Officers Mott and Malone.<sup>31</sup>

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<sup>29</sup> The video was booked under Control No. 749303.

<sup>30</sup> The video was booked under Control No. 746789.

<sup>31</sup> The video was booked under Control No. 746787.

Investigators located a business surveillance video from Ideal Cabinets, located at 5110 Alhambra Avenue. The video captured Officers Mott and Malone arriving at the intersection of Belleglade and Alhambra Avenues, exiting their police vehicle, and their OIS incident.<sup>32</sup>

## **Photographs**

Photographs of the OIS scene and associated evidence are stored under Control Nos. 0770081, 0770082, 0770097, and 0770244.

## **Notifications**

At approximately 2346 hours, the DOC was notified of the Categorical Use of Force and the details of the subsequent notifications are attached (Addendum No. 5).

## **Personnel at Scene**

Police Officer II David Chou, Serial No. 37776, FID, arrived at scene at approximately 0120 hours. Crime scene logs documenting additional personnel at the location are contained within the FID case file and are available for review.

## **Communications**

A copy of the CD printout relative to the OIS incident, Incident No. 190818006337, is on file at FID. A digital recording of Hollenbeck Division base frequency and City-wide tactical frequency 2, Channel 36, at the time of this incident are stored at FID. The digitally-recorded interviews of the involved and percipient officers, along with the civilian witnesses are stored in the Training Evaluation and Management System (TEAMS II) database (Addendum No. 27).

## **Justice System Integrity Division**

This case met the criteria for presentation to the JSID and will be presented after completion of this administrative report.

## **Investigators' Notes**

1. Hollenbeck Area Crime and Intelligence Analyst II Magda Tellechea, Serial No. E9628, conducted a computer inquiry of Reporting Districts (RD) in the El Sereno and surrounding areas to determine the gang related criminal activity one month prior to this incident. The inquiry revealed there was a shots fired incident on July 24, 2019, in RD 0418, assault with a deadly weapon (ADW) on July 29, 2019, in RD 0438, and a robbery on August 7, 2019, in RD 0409.

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<sup>32</sup> The video was booked under Control No. 749302.

2. Crime and Intelligence Analyst Tellechea conducted a computer inquiry of Reporting Districts (RD) 0438 and 0439, located in the El Sereno Area, to determine -if Gabriel was involved in any criminal activity prior to this incident. A Part 1 crimes inquiry for August 18, 2019 revealed there was a vehicle theft in RD 0439 and a theft in RD 0438. There was no suspect information provided in either crime linking Gabriel to those incidents.<sup>33</sup>
3. Force Investigation Division Captain III Al Pasos, Serial No. 25501, notified the Office of Operations (OO) Assistant Chief (AC) Robert Arcos, Serial No. 26185, of the issues and/or concerns, such as driving while unholstered and use of profanity, involving personnel under his Command. In addition, Hollenbeck Patrol Commanding Officer, Captain 1 Sonia Monico, Serial No. 30364, was notified of the issues and/or concerns involving personnel under her Command. A copy of the issues and or concerns are on file in the FID Casebook and available for review upon request.
4. During the crime scene investigation, a glass pipe containing a brown residue substance, Item No. 1, was recovered from the east/west alley, north of Alhambra Avenue. The brown residue substance tested positive for methamphetamine. Video footage determined this item was not in Gabriel's route of travel as he fled from Officers Mott and Malone.
5. On August 27, 2019, Detective Arteaga contacted ATF Agent Nicole Lozano and requested the assistance of the ATF in locating the purchaser of the handgun to determine how Gabriel obtained possession of the pistol. According to Lozano, gun purchasers in the State of Nevada are not mandated to register their weapons. Lozano stated due to the gun laws in the State of Nevada and the number of days between the date of purchase and time of crime, 2344 days, the ATF would not assist in locating the gun purchaser.
6. On December 9, 2019, Detective Arteaga met with Detective II Ben Macias, Serial No. 32874, Gang and Narcotics Division, Gang Support Section, Gun Detail, and requested the Gun Detail's assistance in locating Humberto Tapia to determine how his print was developed inside of the right grip of the handgun.

On January 22, 2020, Detective Arteaga met with Detective Macias to determine the results of his investigation. According to Detective Macias, there is no evidence to suggest that Tapia is trafficking firearms or any evidence that Tapia has firearms registered to him. A Lexus Nexus inquiry was unable to pinpoint an exact address

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<sup>33</sup> According to the Los Angeles Police Department (LAPD) crime statistics glossary, Part I Crimes are the eight "serious offenses" for which the FBI gathers national data including Homicide, Rape, Robbery, Aggravated Assaults, Burglary, Larceny, Vehicle Theft and Arson.

for Tapia since the inquiry revealed Tapia has possible residences in Nevada and Utah.

Tapia had a minimal criminal history which consisted of one felony arrest in December 1991, for grand theft, misdemeanor arrest in May 1997, for prostitution, and misdemeanor arrest in November 1998, for driving a motor vehicle with a suspended or revoked license.

7. Photo No. J8J66644 from D No. 0770082 depicts damage to the driver's side rear window panel of Shop No. 80601. A review of the vehicle damage log determined this damage was reported in February 2017.
8. Communications Division Senior Police Service Representative 1 Roberto Lopez, Serial No. N3005, was contacted to ascertain why certain broadcasts were not captured on Hollenbeck frequency. Lopez indicated he would look into this matter and provide a written report addressing his findings. As of the date of this report, his findings are pending.

[This section intentionally left blank.]

## **CHIEF OF POLICE REPORT**<sup>34</sup>

### **Chief of Police Findings**

**Tactics** – Tactical Debrief, Officers Mott, Malone, Mencias, and Hernandez.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers Mott, Malone, Mencias, and Hernandez.

**Lethal Use of Force** – In Policy, No Further Action, Officer Mott, Malone, and Hernandez.

### **Chief of Police Analysis**

#### **Detention**

- Officers Mott and Malone were conducting crime suppression when they observed a male, later identified as the suspect, officers Mott and Malone noted the suspect had not committed any violations; therefore, they did not attempt to detain the suspect. Officers Mott and Malone were parked at a red-phase tri-light with the windows of their police vehicle down. The suspect approached their marked police vehicle and fired one round at the police vehicle. The round struck the driver side front door, traveled through the vehicle, and exited the front passenger door's open window. Officer Mott drove away from the suspect. Simultaneously, the suspect ran into a nearby alley. Officer Mott could no longer see the suspect and redeployed to the west side of the alley to set up containment. The suspect re-approached Officers Mott and Malone and fired three rounds at them before running away eastbound. Officers Hernandez and Mencias arrived at the location. Officer Hernandez observed the suspect pointing a firearm at him. Officer Hernandez fired at the suspect until the suspect dropped his firearm. The suspect was taken into custody without further incident. The actions of Officers Mott, Malone, Hernandez, and Mencias were appropriate and within Department policies and procedures.

#### **Tactics**

- Department policy relative to a Tactical Debrief is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance."*

Department policy relative to Administrative Disapproval is: *"A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training" (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

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<sup>34</sup> The information provided in this section summarizes the analysis and findings set forth in the Chief of Police's report for this case.

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

## **Tactical De-Escalation**

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

### *Tactical De-Escalation Techniques*

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

**Planning** – Officers Mott and Malone, having been partners for approximately one year, had previously discussed tactics, pedestrian stops, vehicle stops, armed suspects, perimeters, and containment. Officer Mott stated he and Malone had decided they would drive past a suspect in an ambush situation. On the day of the incident, Officers Mott and Malone had also determined the driver would be the contact officer while the passenger would be the cover officer. After the suspect ambushed the officers and fired at them, the officers enacted their pre-discussed plan and drove away from the suspect. When they could not see the suspect once he ran into the alley, Officers Mott asked Officer Malone what he wanted to do. Together, they planned to set up containment and immediately began setting up a perimeter.

**Assessment** – Officers Mott and Malone, while being fired upon by the suspect, individually assessed their available cover at the corner of Belleglade Avenue and Alhambra Avenue. In addition, Officers Mott and Malone both assessed between each round fired and had paused between sequences of fire. Officer Hernandez exited his police vehicle and observed that the suspect facing him, pointing a firearm at him. Officer Hernandez, after firing one round, assessed and simultaneously took



cover. After seeing the suspect was still a deadly threat, Officer Hernandez fired additional rounds, continually assessing, until observing the suspect had fallen and his firearm was pointed downward. Officer Mencias, while not seeing anyone fire their service pistols, assessed his environment and heard shots being fired.

During the discharging of their service pistols, Officers Mott, Malone, and Hernandez continued to assess the incident and ceased firing when the suspect ceased posing a threat of serious bodily injury or death.

**Time** – Officers Mott and Malone, having been ambushed, used their limited time to create distance between themselves and the suspect. Officers drove through and out of the ambush rather than engaging in an OIS. Doing so allowed them to gain more time to create a tactical plan and to set up containment to effectively apprehend the suspect. As the officers were attempting to establish a containment perimeter and a slower paced well-coordinated response to the incident, the actions of the suspect continued to escalate; thereby reducing the time available to the officers.

**Redeployment and/or Containment** – After Officers Mott and Morales<sup>35</sup> were fired upon by the suspect, Officer Mott drove away from their location to escape the deadly assault and redeploy so their police vehicle would be facing the suspect which would allow the officers to use their ballistic panels for cover. After seeing that that suspect fled into the alley, the officers redeployed to set up containment on the west end of the alley. Officer Mencias did not see the suspect's location, but due to Officer Mott's warning, immediately redeployed to the rear of his vehicle for cover. Officers attempted to contain the suspect, but the suspect continued to move which resulted in an additional OIS.

**Lines of Communication** – Officer Morales broadcast a shots fired call, a suspect description, and requested officers for a perimeter. After arriving at Belleglade Avenue and Alhambra Avenue, Officer Morales began broadcasting their location but was interrupted by the suspect's gunfire. The shortened broadcast lead to CD utilizing the last known location of the officers for their follow up broadcast. Responding officers were left unaware of Officers Mott and Morales' follow up location. However, even after being fired upon for a second time, Officer Morales resumed his broadcast while redeploying to cover.

The UOFRB noted, and the Chief concurred, that due to the rapidly unfolding nature of this incident, the officers had limited time to react to the suspect's actions. Officers Mott, Malone, Hernandez and Mencias were required to make quick tactical decisions while being mindful of community safety. Officers Mott and Morales

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<sup>35</sup> The OIG notes that the Chief of Police Report referred to Officer Malone as Officer "Morales" in some instances, and that a Supplemental Report was issued by the Chief of Police on July 1, 2020 addressing this matter.

articulated a thorough assessment of their background at the time of their OIS. Officers Mott, Malone, Hernandez, and Mencias reacted quickly in stopping the deadly actions of the suspect.

During the review of the incident, the following Debriefing Topics were noted:

### **Debriefing Point No. 1 Utilization of Cover**

*Cover is defined as any object or structure that will stop the opponent's bullets. Officers should attempt to move to and use available cover when involved in any tactical situation and especially when there are weapons involved. Officers should be aware of what items in their surrounding area can be used as cover and what type of cover is required to stop specific rounds (handgun, shotgun, or rifle rounds) (Los Angeles Police Department, Basic Firearms Manual, July 2015).*

*Whenever possible, officers should place an object between themselves and the suspect as cover or a barrier. A barrier could be a chain link fence, wrought iron gate or any similar object that prevents the assailant from reaching the officer. If the suspect is contained and does not pose an immediate threat to officers, the public or himself/herself, time is our best tool. Time allows more opportunity to communicate with the suspect and helps to calm the situation (Los Angeles Police Department, Training Bulletin, Volume XLVI, Issue 3, Weapons Other Than Firearms, October 2017).*

Officers Mott and Malone did not redeploy to positions of cover when approaching the armed suspect and when firing their service pistols at him.

The utilization of cover, coupled with distance, enables an officer to confront an armed suspect while simultaneously minimizing their own exposure. As a result, the overall effectiveness of a tactical incident can be enhanced, while also increasing an officer's tactical options by using available cover.

In this case, Officers Mott and Malone's actions were viewed in light of the suspect's deadly and persistent actions. Officers Mott and Malone left the cover of the ballistic panels of their police vehicle and moved to other positions of cover that would improve their ability to observe the suspect. While moving to their positions of cover, they were again fired upon by the suspect. The UOFRB noted they would have preferred the officers to have been behind cover, but recognized that officers are trained to move away from their police vehicles in ambush incidents. Also, the UOFRB noted the suspect continued to approach the officers and fire at them, making him a persistent and deadly threat. The UOFRB recognized the suspect's threat to not only the officers, but also to nearby citizens. In this case, it was understandable for Officer Mott to prioritize obtaining a sight picture with his service pistol to stop the threat, over gaining cover. Officer Mott obtained a sight picture of the suspect by utilizing an elevated platform to fire at the suspect. The UOFRB

recognized that high ground was more important at the time. It should also be noted that the suspect had already targeted both Officers Mott and Malone while they were seated inside of their police vehicle. The police vehicle was a highly visible target for the suspect, if he chose to continue to target it.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that Officers Mott and Malone's actions were reasonable given the deadly actions of the suspect and did not deviate from approved Department tactical training. In order to enhance future performance, the Chief directed that this be a topic of discussion during the Tactical Debrief.

### **Additional Tactical Debrief Topics**

- **Tactical Vehicle Deployment** – Officers Mott and Malone stopped their police vehicle in the middle of the crosswalk in the suspect's path and line of sight. Even though the police vehicle affords ballistic protection, the officers are reminded, when possible, to attempt to position their police vehicle in a manner that is most advantageous to their safety, wherein they maintain the tactical advantage. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Driving while Maintaining Control of a Service Pistol** – Officer Mott unholstered his service pistol and held it in his right hand as he drove his police vehicle with his left hand. In this case, Officers Mott and Malone had been ambushed and fired upon by the suspect. While the UOFRB noted this would be allowed under certain circumstances, such as an ambush, officers are reminded there is a heightened concern for safety when maneuvering a police vehicle while holding a service pistol. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Basic Firearms Safety Rules** – Officers Mott and Malone simultaneously pointed their service pistols in a westerly direction towards the alley where Gabriel was last seen while seated in their patrol vehicle, resulting in Officer Malone momentarily covering Officer Mott with his service pistol. Although the officers had just been fired upon, officers are still reminded of basic firearms safety rules. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Tactical Communication** – Officer Mott deployed from his police vehicle to engage an armed suspect, while Officer Malone attempted to confirm with Officer Mott of the suspect's location. Although Officer Mott did advise Officer Malone the suspect's location as Officer Mott exited the police vehicle, Officer Malone was left unaware of the suspect's specific location until the suspect fired at the officers. Officers are reminded of the importance of effective communication between partners during a tactical incident to reduce possible confusion and improve operational success. The Chief directed this to be a topic of discussion during the Tactical Debrief.

- **Occupying a Moving Vehicle with a Service Pistol Drawn** – Officer Malone was seated in the passenger seat of the police vehicle with his service pistol drawn as Officer Mott drove to their follow up location. Although in this case the officers did not know the location of the armed suspect, officers are still reminded of risk of an unintentional discharge while being unholstered in a moving vehicle and the concern for safety. In order to enhance future performance, the Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Updating Status** – Officers Mott and Malone did not update their locations until after they engaged the armed suspect, leaving communications unaware of their location. The FID investigation revealed that the distance from Officer Mott and Malone's original location to their follow-up location was approximately 290 yards. Although the follow-up location was in visual sight of their original location, officers are reminded of the importance of updating their status not only for their safety, but the safety of responding officers. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Situational Awareness** – Officers Mott and Malone, after being ambushed, drove away from the location, conducted a U-Turn and returned to the last known location of the armed suspect as he had disappeared from their view. In doing so, Officers Mott and Malone placed themselves in a similarly disadvantageous position in which they were originally fired upon. Officers are reminded in the wake of an ambush, to utilize time and distance when returning to the immediate vicinity. Officers Artiaga and Arias responded to the incident and drove directly towards and through the OIS location, causing them to drive in the line of fire between the officers and the suspect. Although the incident was extremely dynamic and unfolding rapidly, officers are reminded of the importance of ensuring they have a good understanding of the circumstances and location of the officers requesting help upon their arrival. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Maintaining a Service Pistol While Placing Vehicle in Park** – Officer Mott utilized his left hand to reach over and place his police vehicle in park while his service pistol was in his right hand. Officers are reminded there is a heightened concern for safety when holding a service pistol in one hand and utilizing the other hand to place a vehicle in park. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Fire Control Discipline** – The investigation revealed that Officer Hernandez discharged seven rounds from his service pistol in approximately two seconds. Officer Hernandez stated that he observed that Gabriel was looking at him and pointing a firearm at Officer Hernandez. The UOFRB noted that Officer Hernandez paused between discharging his rounds. While this was an extremely dynamic incident, Officer Hernandez is reminded of the importance of fire control discipline to maximize his accuracy by utilizing time to his advantage, when possible. The Chief directed this to be a topic of discussion during the Tactical Debrief.

- **Radio Codes and Procedures** – Officers Mott and Malone’s broadcasts were incomplete due to multiple officers broadcasting simultaneously. During the UOFRB, FID investigators presented five transmissions had not been broadcast during the incident. A further analysis confirmed that the incomplete transmissions were due to multiple officers broadcasting simultaneously, as well as the Radio Telephone Operator (RTO) conducting broadcasts.<sup>36</sup> Officers Mott and Malone are reminded to monitor the frequency when broadcasting to ensure that their broadcasts are completed. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Searches of Arrestees** – Officer Hernandez did not complete a full search of Gabriel upon his arrest. Although this was during a dynamic incident which involved an OIS, Officer Hernandez is reminded of the importance of thoroughly searching a suspect was known to have been armed with a firearm. The Chief directed this as a topic of discussion during the Tactical Debrief.
- **Stepping on Limbs** – Officer Arias utilized his foot to apply bodyweight on Gabriel’s ankles as Gabriel was being taken into custody. Although Gabriel had just fired his handgun at officers and was being taken into custody, Officer Arias is reminded that stepping on limbs can lead to a loss of balance. In addition, this action can cause a negative impact to the public’s perception of the Department. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Blood Borne Pathogens** – Officer Hernandez took Gabriel into custody without utilizing Personal Protective Equipment (PPE) despite Gabriel having blood on his chest. Officers are reminded to utilize PPE’s, when feasible, to prevent the spread of blood borne pathogens. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Preservation of Evidence** – Officer Mott placed his left foot on Gabriel’s firearm, which was in the slide lock position, and moved it two feet north from its original position.<sup>37</sup> Officer Mott stated that he did so since he observed Gabriel moving and the firearm was approximately two feet away from Gabriel. Officer Mott is reminded that whenever tactically feasible, it is preferable to have an uninvolved officer guard evidence and leave it undisturbed until FID investigators can properly document and preserve the scene. The Chief directed this to be a topic of discussion during the Tactical Debrief.

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<sup>36</sup> Senior Police Service Representative I R. Lopez, Serial No. N3005, CD, conducted a New Intel Computer Engineering (NICE) Systems inquiry to complete the analysis.

<sup>37</sup> When a firearm is in the slide lock position (the slide of the firearm is locked open), the firearm should not be able to discharge a round.

- **Required Equipment** – Officers Mott, Malone, Hernandez, and Macias left their side-handle baton in their police vehicles at the time of the incident. Officer Mencias did not have his Hobble Restraint Device (HRD) on him. Officers are reminded to have all required equipment on their person at all times to allow for the availability of alternative force options in the event they are needed. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Command and Control**

*Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

*Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).*

*Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Los Angeles Police Department, Supervisor's Field Operations Guide, Volume 2, Emergency Operations Guide).*

Sergeant Covarrubias responded to the incident after Gabriel was taken into custody and was the first supervisor to arrive. Sergeant Covarrubias immediately began assessing the scene and began assigning duties. Sergeant Covarrubias addressed issues such as traffic control to preserve the crime scene and assigned officers to

contain the area. Sergeant Covarrubias identified the primary unit, as well as all three officers who fired their service pistols and advised them they would each be assigned a supervisor to take their Public Safety Statements (PSS). Sergeant Covarrubias ensured each officer involved was monitored by him until the arrival of additional supervisors. Sergeant Covarrubias assigned a sergeant to each officer as the sergeants arrived. Sergeant Covarrubias maintained monitoring duties of Officer Malone and obtained a PSS from him.

Sergeant Vazquez separated, monitored, and obtained a PSS from Officer Hernandez.

Sergeant Grant separated, monitored, and obtained a PSS from Officer Mott.

Lieutenant Bautista met with Sergeant Covarrubias. Lieutenant Bautista declared himself the incident commander and communicated this change with Sergeant Covarrubias. Lieutenant Bautista coordinated CP set up and ensured that all involved officers' BWVs were secured at the CP.

The actions of Lieutenant Bautista, along with Sergeants Covarrubias, Vazquez, and Grant, were consistent with Department supervisory training and met the Chief's expectations of field supervisors during a critical incident.

### **Tactical Debrief**

- In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred, that Officers Mott, Malone, Hernandez, and Mencias' tactics did not deviate from approved Department tactical training.

Each tactical incident also merits a comprehensive debriefing. In this case, there were areas identified where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Although, it was determined that Officers Artiaga and Arias were not substantially involved in this incident and did not receive formal findings, the UOFRB recommended, and the Chief concurred, that they would benefit from attending the Tactical Debrief.

Therefore, the Chief directed that Officers Mott, Malone, Hernandez, Mencias, Artiaga, and Arias attend a Tactical Debrief and that the specific identified topics be discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control;
- Lethal Force.

## **General Training Update (GTU)**

- On September 5, 2019, Officers Mott, Malone, and Hernandez attended a General Training Update. All mandatory topics were covered.

## **Drawing/Exhibiting**

- Department policy relative to drawing and exhibiting a firearm is: *“An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified”* (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).

### **Officer Mott**

According to Officer Mott, he passed through the intersection, negotiated a U-turn, and drove northbound on Lombardy Boulevard, passing Alhambra Avenue. Officer Mott believed the situation was going to escalate to deadly force since Gabriel had already shot at them once. Officer Mott unholstered his service pistol with his right hand as he maneuvered his police vehicle with his left hand.

Officer Mott recalled, *He takes one step forward and fires one round at our police vehicle.<sup>38</sup> At that point, he travels toward the -- to the north toward the back of our car at which point I point hit the gas, go through Alhambra and make a U-turn. As I make the U-turn and coming back, come back across Alhambra northbound suspect is running northbound along the cars and makes a westbound turn into the alley. At that point, I unholster my firearm based on the tactical situation and my reasonable belief that the situation to escalate to deadly force. He had already shot at us once.<sup>39</sup>*

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<sup>38</sup> Mott, Page 8, Lines 23-24.

<sup>39</sup> *Id.*, Page 9, Lines 5-13.



## **Officer Malone**

According to Officer Malone, he believed Gabriel was trying to kill him and Officer Mott. Officer Malone believed the situation had escalated to the point where deadly force was justified. Officer Malone unholstered his service pistol as Officer Mott drove north through the intersection.

*Officer Malone recalled, I remember the suspect walking off of the curb towards us. It was a male Hispanic wearing a black hoodie, blue jeans, his hand in his pocket. He started to walk towards the police vehicle and at that point he removed a firearm from his pocket, pointed it at us and shot. At -- at that point in time I believed he was trying to kill us and I believed that this situation had escalated to where deadly force would be justified so I unholstered my firearm.<sup>40</sup>*

## **Officer Hernandez**

According to Officer Hernandez, he was the passenger and his partner, Officer Mencias, was the driver. Officer Hernandez stated they were responding to the help call and heard gunfire over the radio. Officer Hernandez, upon turning onto Alhambra Avenue from Lombardy Boulevard, observed two officers coming towards their direction. Officer Hernandez heard an unidentified officer state, "Stop, stop, stop." Officer Hernandez stated Officer Mencias stopped their vehicle and, as Officer Hernandez was about to exit, he heard someone say, "Behind you." Officer Hernandez unholstered his service pistol.

*Officer Hernandez recalled, Due to the nature of the call, sir. It was a man with a gun firing at officers. That's basic -- it was a tactical situation where deadly force would have been justified.<sup>41</sup> And as soon as we were about to exit out of our vehicle we hear, "Behind you." The moment I hear, "Behind you" and we turn around and where I started to unholster my --my pistol I seen the suspect standing south of me pointing a firearm and staring straight at me pointing a firearm at me.<sup>42</sup>*

## **Officer Mencias**

According to Officer Mencias, he exited his vehicle and heard gunshots. While unholstering his service pistol, he redeployed around to his police vehicle and took cover behind the rear panel, next to Officer Hernandez. Officer Mencias could not observe Gabriel and did not observe Officer Hernandez's Officer involved Shooting (OIS).

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<sup>40</sup> Malone Page 7, Lines 6-14.

<sup>41</sup> Hernandez, Page 13, Lines 24-25 and Page 14, Lines 1-2.

<sup>42</sup> *Id.*, Page 8, Lines 1-6.

Officer Mencias recalled, *So as soon as I stepped out, like I said, smelled the gun powder in the air and I just heard shots fired. And I thought he was shooting at us. I was just outside. I had just gotten out, so I wasn't sure where he was shooting from and I was afraid he was going to come out from behind.*<sup>43</sup>

In this case, the UOFRB conducted a thorough review and evaluation of the reasonableness of Officer Mott's and Malone's, Drawing/Exhibiting. The UOFRB noted that Officers Mott and Malone initially drew their service pistols upon being ambushed and fired upon by Gabriel. Each officer was fearful for not only the safety of himself, but of each other as well.

The UOFRB conducted a thorough review and evaluation of the reasonableness of Officer Hernandez's, Drawing/Exhibiting. The UOFRB noted that Officer Hernandez knew he was responding to an active shooting and upon his arrival the circumstances escalated when he heard that the suspect was located behind him.

The UOFRB conducted a thorough review and evaluation of the reasonableness of Officer Mencias' Drawing/Exhibiting. The UOFRB noted that Officer Mencias knew he was responding to an active shooting and upon exiting the police vehicle he heard gunshots, smelled gun smoke, and believed that he was being shot at.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Mott, Malone, Hernandez, and Mencias while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, the Chief found Officers Mott, Malone, Hernandez, and Mencias' Drawing/Exhibiting to be In Policy, No Further Action.

#### **Use of Force – General<sup>44</sup>**

- *It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*
  - *Defend themselves;*
  - *Defend others;*
  - *Effect an arrest or detention;*
  - *Prevent escape; or,*
  - *Overcome resistance*

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<sup>43</sup> Mencias Page13, Lines 11-14 and Page 14, Lines 16-19.

<sup>44</sup> Special Order No. 4, 2020 – Policy on the Use of Force - Revised, was adopted by the Department on February 5, 2020, after this incident occurred.

*The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

## **Lethal Use of Force**

*Law enforcement officers are authorized to use deadly force to:*

- *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
- *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
- *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume No.1, Section 556.10).*

**Officer Mott** – 9mm, eight rounds, in three sequences of fire, in an easterly direction.

**Sequence-One** – Two rounds in an easterly direction from an approximate distance of 133 feet and 6 inches.

According to Officer Mott, as he attempted to redeploy towards the building, Gabriel began firing at him from approximately fifty or sixty yards. Officer Mott observed Gabriel take cover behind a tree. Officer Mott utilized a two-handed grip on his service pistol and fired two or three rounds at Gabriel's center mass in an eastbound direction.

Officer Mott recalled, *I look eastbound and see the suspect walking westbound towards our -- towards our vehicle. I then verbalize to my partner, "He's right here. He's right here." I get out and make my way to the corner of the building that's on the northeast corner of Belleglade and Alhambra at which point he begins firing at me. I return fire and he then makes his way to a tree...<sup>45</sup> 50, 60 yards maybe... It was dark. Very dark... I could only see the dark outside, or the outline of a silhouette and muzzle flashes.<sup>46</sup> Two or three rounds.<sup>47</sup>*

**Sequence-Two** – Two rounds in an easterly direction from an approximate distance of 131 feet 8 inches.

According to Officer Mott, Gabriel was still taking cover behind the tree. Officer Mott observed Gabriel's silhouette from the waist up which included his arm, upper body, and head. Officer Mott utilized a two-handed grip, obtained a sight picture of Gabriel's center mass, and fired about four or five rounds at the center mass of Gabriel's body, in an east direction.

Officer Mott recalled, *It was another about four or five... Center mass to his body... Two handed.<sup>48</sup> When I hopped down is when I no longer perceived him as a threat, that I knew at that point he was -- he was taking off. When I hopped off the ledge or that platform, that's when I had seen him leave.<sup>49</sup>*

According to Officer Mott, after being asked by FID detectives if he observed the suspect fleeing while he (Officer Mott) fired, Officer Mott stated, "No."<sup>50</sup>

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<sup>45</sup> Mott, First Interview, Page 10, Lines 1-8.

<sup>46</sup> *Id.*, Second Interview, Page 7, Lines 4, 7, and 13-17.

<sup>47</sup> *Id.*, First Interview, Page 20, Line 5.

<sup>48</sup> *Id.*, Page 20, Lines 19 & 22 and Page 21, Line 1.

<sup>49</sup> *Id.*, Second Interview, Page 7, Lines 20-24.

<sup>50</sup> *Id.*, Page 6, Line 17.

According to Officer Mott, when asked by FID detectives if he could still observe Gabriel from the top of the cement platform Officer Mott stated, "Yes."<sup>51</sup>

According to Officer Mott, when asked by FID detectives if he fired any rounds at Gabriel as he fled, Officer Mott stated, "No."<sup>52</sup>

**Sequence-Three** – Four rounds in an easterly direction from an approximate distance of 131 feet, 8 inches.

According to Officer Mott, he stepped on top of an elevated platform to his left to get a better visual of Gabriel. While Officer Mott did so, Gabriel fired at least one round in his direction from behind the tree. Officer Mott heard a window shattering from a business on the northwest corner of the intersection. Officer Mott utilized a two-handed grip and returned fire again.

Officer Mott recalled, *...he then makes his way to a tree and takes cover behind a tree and starts firing again.*<sup>53</sup> *In order to get a better visual on him there's an elevated platform just to my left. I get on top of the elevated platform. As he continues to fire, he -- I hear the -- a window to the building that's on the northwest corner of Alhambra and Belleglade shatter and I return fire again.*<sup>54</sup>

**Officer Malone** – 9mm, seven rounds in an easterly direction from an approximate distance of 152 feet.

According to Officer Malone, he heard one or two shots being fired and observed muzzle flash, which illuminated Gabriel. Officer Malone redeployed back to his police vehicle for cover. Officer Malone believed Gabriel was trying to kill him and Officer Mott. Officer Malone wanted to protect himself and his partner from the eminent threat of death or serious bodily injury. Approximately two seconds after he heard Gabriel fire, Officer Malone utilized a two-hand grip and fired his service pistol once, in an easterly direction. Officer Malone stated that after a momentary lull, Officer Malone reassessed then continued firing approximately six rounds to stop the threat.

Officer Malone recalled, *When I start to redeploy from the police vehicle that's when I hear the shot. I see the muzzle flash and it illuminates the suspect and I saw the suspect firing at my partner. At that point, I redeployed back towards cover behind the police vehicle. I still see the suspect and that's when to protect myself and my partner from the eminent threat of death or serious bodily injury I fired to stop the threat... after I shoot, I reassess and asking Adam where -- if he -- if he sees him,*

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<sup>51</sup> *Id.*, Page 8, Line 3.

<sup>52</sup> *Id.*, Page 9, Line 2.

<sup>53</sup> *Id.*, First Interview, Page 10, Lines 7-8.

<sup>54</sup> *Id.*, Page 10, Lines 8-15.

*where he's at. If he has any -- any -- anything.<sup>55</sup> He can see me and my partner and that he's trying to kill us...Because I was protecting myself and Adam. I thought this guy was trying to kill us.<sup>56</sup> Approximately six... I would say rapid... I remember shooting once and then maybe a tiny lull and then continued firing.<sup>57</sup> We then observe the suspect starting to run eastbound in east south direction.<sup>58</sup>*

According to Officer Mott, after being asked by FID detectives if he reassessed between rounds one through seven, Officer Mott stated that yes.<sup>59,60</sup>

**Officer Hernandez** – 9mm, seven rounds, in two sequences of fire, in a southeasterly direction from an approximate distance of 53 feet.

**Sequence-One** – One round, in a southeasterly direction from an approximate distance of 53 feet.

According to Officer Hernandez, he observed Gabriel staring straight at him. Officer Hernandez observed Gabriel standing south of him. Officer Hernandez observed Gabriel pointing a firearm north, at him, from an approximate distance of two car lengths. Officer Hernandez observed Gabriel holding the gun in a shooting motion with his hands raised towards his upper chest and his whole-body in a shooting stance. Officer Hernandez was in fear for his life and believed Gabriel was an immediate threat and was going to kill him. Officer Hernandez utilized a two-hand grip and fired one round at Gabriel. After firing, Officer Hernandez ducked and took cover behind his police vehicle's rear panel.

*Officer Hernandez recalled, He was pointing the gun north towards me... The suspect was holding the gun in a shooting -- in a shooting motion. His hands were raised towards his upper chest and you could see the pistol pointed at in like at me. His face, his whole-body shooting stance and he was -- he was locked on me... he's going to kill me and I was in fear for my life.<sup>61</sup> I seen the suspect standing south of me pointing a firearm and staring straight at me pointing a firearm at me. And that's when I fired what I believed was one round, took cover.<sup>62</sup>*

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<sup>55</sup> Malone, Page 8, Lines 19-25 and Page 9, Line 1-4.

<sup>56</sup> *Id.*, Page 21, Lines 3-4 and Page 22, Lines 19-22.

<sup>57</sup> *Id.*, Page 23, Lines 7, 13, and 17-18.

<sup>58</sup> *Id.*, Page 9, Line 5.

<sup>59</sup> *Id.*, Page 23, Line 22.

<sup>60</sup> The OIG notes that the intended subject of this sentence appears to be Officer Malone, and not Officer Mott.

<sup>61</sup> Hernandez, Page 14, Line 5, 9-13 and Page 15, Lines 19-20.

<sup>62</sup> *Id.*, Page 8, Lines 4-8.

**Sequence-Two** – Six rounds, in a southeasterly direction from an approximate distance of 53 feet.

According to Officer Hernandez, after taking cover, he came back, about a split second later, and observed the firearm was still pointed at him. Officer Hernandez fired four more rounds at Gabriel. Officer Hernandez observed Gabriel drop down and observed his handgun was down. Officer Hernandez stated Gabriel was utilizing a grabbing motion to reach his handgun.

Officer Hernandez recalled, *...came back and fired four more rounds... split second.*<sup>63</sup> *...then I shot four more rounds....*<sup>64</sup> *...(I) seen him just drop down and then that's when I just seen him down, pistol down and him swarming to try to get the pistol.*<sup>65</sup>

The UOFRB noted that Officers Mott and Malone were ambushed and fired upon by Gabriel in an unprovoked ambush. The bullet fired at them traveled through the police vehicle's front passenger compartment where both Officers Mott and Malone were seated. Officers Mott and Malone used lethal force to defend their lives as Gabriel shot at them, the scene was dynamic and evolving as Gabriel fled in multiple directions, and fired at the officers an additional occasion. The officers utilized a reasonable amount of lethal force to stop the deadly threats.

The UOFRB noted that Officer Malone stated that he observed muzzle flash emanating from Gabriel's handgun. Officer Malone feared for Officer Mott's life, as well as his own. The UOFRB also noted that Officer Malone believed that Gabriel posed a threat of serious bodily injury or death.

The UOFRB noted that Officer Hernandez stated Gabriel was standing in a shooting position and pointing the handgun at him as he exited the police vehicle. Officer Hernandez was in fear for his life. The UOFRB also noted that Officer Hernandez fired in self-defense to stop Gabriel's violent actions directed toward him.

The UOFRB noted the officers were aware of their background during their respective OIS's and their cognizance of public safety. In addition, each officer demonstrated control and composure throughout the event to ensure the safety of the community and others.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience would reasonably

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<sup>63</sup> *Id.*, Page 16, Lines 3-4.

<sup>64</sup> *Id.*, Page 8, Line 8.

<sup>65</sup> *Id.*, Page 17, Lines 5-7 and Line 9.

believe Gabriel's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable.

Therefore, the Chief found Officers Mott, Malone and Hernandez's Use of Lethal Force to be In Policy, No Further Action.

### **Additional/Equipment**

- **Profanity** – The FID investigation revealed that Officer Hernandez utilized profanity when giving orders to Gabriel while Gabriel was being taken into custody. This issue was brought to the attention of Captain S. Monico, Serial No. 30364, Commanding Officer, Hollenbeck Patrol Division, who advised that this issue was addressed through informal training. The Commanding officer of Operations Central Bureau and the Director of the Office of Operations concurred with this action. As such, the Chief deemed no further action is necessary.
- **DICVS Activation** – The investigation revealed that Officers Mott and Malone did not activate their DICVS during this incident. This issue was brought to the attention of Captain Monico who reviewed the circumstances of this OIS and noted that Officers Mott and Malone were ambushed in this incident. Officer Mott and Malone's priority was the preservation of their lives. Due to circumstances of this incident, Captain Monico recommended no further action. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.
- **Documentation of Categorical Use of Force** – Sergeant Vazquez incorrectly indicated in his Sergeant's Daily Log that he relinquished the monitoring of Officer Hernandez to Sergeant Cooper, Serial No. 32659, Hollenbeck Patrol Division. The correct name for the sergeant was Sergeant Hooper.

Sergeant Grant did not note which officer she monitored in her Sergeant's Daily Log.

These issues were brought to the attention of Captain Monico who advised that they were addressed through informal training. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

### **Audio/Video Recordings**

- **Digital In-Car Video System (DICVS)** – Officers Mott and Malone's police vehicle was equipped with DICVS, but was not activated at the time of the incident. Officers Mencias and Hernandez' police vehicle was equipped with DICVS and was activated during the incident. However, due to the positioning of the vehicle, the OIS was not visually captured and only Officer Hernandez' shots can be heard. Responding units' DICVS did not capture the OIS.



- **Body Worn Video (BWV)** – All responding Officers had their BWV powered on and activated during the incident. Officers Mott, Malone, and Hernandez captured their respective OIS incidents. Officers Mott and Malone’s BWV captured their broadcasts which were not transmitted to CD due to multiple officers attempting to broadcast simultaneously. Officers Mott and Malone’s BWV also captured Gabriel firing at them. Officer Mencias’ BWV captured the sound of Officer Hernandez firing his rounds.
- **Outside Video** – The FID investigation revealed that four separate locations captured footage of the incident. A residential surveillance system at 5137 Alhambra Avenue captured Gabriel running west, firing three rounds in a westerly direction, then running eastbound on Alhambra Avenue. The Brooklyn Smog Center and Auto Registration at 5197 Alhambra Avenue had surveillance footage which captured Gabriel firing at Officers Mott and Malone on Lombardy Boulevard north of Alhambra Avenue, as well as Gabriel running into the east/west alley, north of Alhambra Avenue. The Organica Creations business at 5201 Alhambra Avenue captured the first round that Gabriel fired at Officers Mott and Malone. The Ideal Cabinets business at 5110 Alhambra Avenue captured Officers Mott and Malone’s OIS incident with Gabriel.

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## **INSPECTOR GENERAL REVIEW**

### **Inspector General Analysis**

#### **Investigation Quality**

- No significant issues of concern were identified in relation to investigation quality.

#### **Training Issues**

- No significant issues of concern were identified in relation to training.

#### **Equipment Issues**

- No significant issues of concern were identified in relation to equipment.

#### **Detention**

- The OIG concurs with the Chief's analysis.

#### **Tactical De-Escalation**

- The OIG concurs with the Chief's analysis.

#### **BWV and DICVS Policy Compliance**

SERIAL	NAME	TIMELY BWV ACTIVATION	FULL 2- MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
42551	Officer Adam Mott	Yes	Yes	Yes	No	No
42698	Officer Michael Malone	Yes	Yes	Yes	No	No
43638	Officer Oscar Hernandez	Yes	Yes	Yes	Yes	Yes
37050	Officer Victor Mencias	Yes	Yes	Yes	Yes	Yes

### **Inspector General Recommendations**

#### **Tactics**

- The OIG concurs with the Chief's findings.

#### **Drawing/Exhibiting**

- The OIG concurs with the Chief's findings.

## **Lethal Use of Force**

- The OIG concurs with the Chief's findings.

A handwritten signature in black ink, appearing to read "M. P. Smith". The signature is fluid and cursive, with the first name "M." followed by a period and the last name "Smith" written in a stylized, connected script.

MARK P. SMITH  
Inspector General